

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

THE
UNREPEALED GENERAL ACTS

OF

THE GOVERNOR GENERAL IN COUNCIL,

WITH CHRONOLOGICAL TABLE, NOTES AND AN INDEX.

From 1877 to 1881, both inclusive.

VOL. III.

THIRD EDITION.

CALCUTTA :
OFFICE OF THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,
1898.

Price, Five Rupees.

PREFACE.

THIS, the third, edition of Volume III of the General Acts, has been compiled generally on the same lines as the preceding volumes, and attention is invited to the remarks contained in paragraphs 2 to 5 of the preface to Volume II.

2. The work of revision and passing through the Press has again devolved principally upon Mr. John Morison, Barrister-at-Law, Personal Assistant to the Secretary to the Government of India in this Department.

H. W. C. CARNDUFF,
Deputy Secretary to the Government of India,
Legislative Department.

SIMLA ;
The 15th October, 1898.

CHRONOLOGICAL TABLE OF UNREPEALED GENERAL ACTS OF THE GOVERNOR GENERAL IN COUNCIL, 1877 TO 1881.

1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Page.
1877	I	The Specific Relief Act, 1877.	Rep. in part, Act XII of 1891. Rep. in part (locally)— Act II of 1882; Act IV of 1882.	1
	II	The Probates and Letters of Administration Act, 1875.	Rep. in part, Act XII of 1891.	36
	III	The Indian Registration Act, 1877.	Rep. in part, Act XIII of 1889. Rep. in part and amended, Act XII of 1891. Amended, Act XII of 1879, ss. 104-107; Act XIX of 1883, s. 12 (1) and (3); Act VII of 1886; Act VII of 1888, s. 65. Supplemented, Act I of 1880, s. 8; Act IV of 1882 [see s. 4, as amended by Act III of 1885, s. (3)].	41
	IV	The Presidency Magistrates (Court-fees) Act, 1877.	Rep. (except s. 57), Act X of 1882.	70
	XI	The Military Lunatics Act, 1877.	Rep. in part, Act XII of 1891. Rep. in part and amended, Act XIII of 1894.	71
	XV	The Indian Limitation Act, 1877.	Rep. in part, Act XII of 1891. Rep. in part (in Madras, Central Provinces, Coorg, Bombay, N.-W. Provinces & Oudh), Act V of 1882, s. 3, and Act VIII of 1891. (See next page.)	75

N.B.—For complete chronological list of all the Acts of the Governor General in Council, whether repealed or unrepealed, see Wigley's Chronological Tables and Index of the Indian Statutes, Vol. I, Ed. 1897.

UNREPEALED GENERAL ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Page.
1877	XV — <i>contd.</i>		Amended, Act XVII of 1877, s. 18 ; Act XII of 1879, s. 108 ; Act V of 1881, s. 156 ; Act IX of 1887, s. 36 ; Act VII of 1888, s. 66 ; Act VI of 1892, s. 1. (in British Baluchistan), Reg. IX of 1896, s. 95.	
1878	I	The Opium Act, 1878 .	Rep. in part, Act IV of 1894. Rep. in part and amended, Act XII of 1891.	111
	VI	The Indian Treasure-trove Act, 1878.	Rep. in part, Act XII of 1891.	119
	VII	The Indian Forest Act, 1878.	Rep. in part (locally), Act VI of 1879. Amended, Act V of 1890, ss. 2-14 ; Act XII of 1891. Rep. (in Assam), Reg. VII of 1891.	128
	VIII	The Sea Customs Act, 1878.	Amended, Act IX of 1885, ss. 5 & 6 ; Act II of 1887, ss. 1-4 ; Act IV of 1889, ss. 10 & 11 ; Act VIII of 1889, ss. 1 & 2 ; Act IX of 1891, s. 3 ; Act XII of 1891 ; Act XIII of 1894, s. 11. Supplemented, Act VIII of 1896. Application of s. 150 extend- ed, Act XIII of 1890, s. 9. Applied with modifications, Act II of 1896.	168

**UNREPEALED GENERAL ACTS OF THE GOVERNOR GENERAL
IN COUNCIL—contd.**

1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Page.
1878	XI	The Indian Arms Act, 1878.	Rep. in part, Act XII of 1891.	243
1879	I	The Indian Stamp Act, 1879.	Rep. in part, Act V of 1888. and amended, Act IX of 1884, s. 10. Act XII of 1891; Act XIII of 1897.	<i>Not reprinted, as a Bill to supersede it is in Council and is likely to be passed in the beginning of 1899.</i>
	III	The Destruction of Records Act, 1879.	Amended, Act I of 1888; Act XVIII of 1888, s. 7; Act VI of 1889, s. 18 (5) and (4); Act XX of 1890, s. 38; Act VI of 1894.	
			Rep. in part, Act XII of 1891. Amended (in Burma), Act XVIII of 1888, s. 7; (in N.-W. Provinces and Oudh), Act XX of 1890, s. 38.	254
	V	The Presidency Banks Act, 1879.	.....	256
	VI	The Elephants Preservation Act, 1879.	Amended, Act II of 1883.	257
	XI	The Local Authorities Loans Act, 1879.	Amended, Act XV of 1885.	259
	XII	The Registration and Limitation Acts Amendment Act, 1879.	Rep. in part, Act XIV of 1882; Act XII of 1891. Virtually rep. in part and amended, Act VII of 1888, s. 66.	263

**UNREPEALED GENERAL ACTS OF THE GOVERNOR GENERAL
IN COUNCIL—*contd.***

1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Page.
1879	XVIII	The Legal Practitioners Act, 1879.	Amended, Act IX of 1884 ; Act XI of 1896.	267
	XX	The Glanders and Farcy Act, 1879.	Rep. in part, Act XXIV of 1886 ; Act XII of 1891. and amended, Act XV of 1896.	283
	XXI	The Foreign Jurisdiction and Extradition Act, 1879.	Rep. in part, Act X of 1882. Amended, Act XII of 1891 ; Act V of 1896.	288
1880	I	The Religious Societies Act, 1880.	.....	297
	VII	The Indian Merchant Shipping Act, 1880.	Rep. in part, Act XIV of 1882 ; Act X of 1889. Rep. in part and amended, Act XII of 1891. Amended, Act VI of 1891, ss. 6-8 ; Act XVII of 1891.	304
	XII	The Kázis Act, 1880.	.....	330
1881	V	The Probate and Administration Act, 1881.	Rep. in part, Act VII of 1889. and amended, Act XII of 1891. Amended, Act VI of 1889, ss. 11-17 ; Act II of 1890, s. 16.	339
	VI	The District Delegates Act, 1881.	.....	373
	IX	The Administrator General's Act, 1881.	Rep. in part, Act II of 1890, s. 11 (2) ; Act XII of 1891.	375

UNREPEALED GENERAL ACTS OF THE GOVERNOR GENERAL
IN COUNCIL—*concl'd.*

1	2	3	4	5
Year.	No.	Short title.	Whether repealed or otherwise affected by legislation.	Page.
1881	XI	The Municipal Taxation Act, 1881.	S. 4 and 5 declared not to apply in cantonments, Act XIII of 1889, s. 20 (2).	378
	XV	The Indian Factories Act, 1881.	Rep. in part and amended, Act XI of 1891.	381
	XVI	The Obstructions in Fairways Act, 1881.	.....	390
	XXVI	The Negotiable Instruments Act, 1881.	Rep. in part, Act XII of 1891. and amended, Act II of 1885. Amended, Act VI of 1897.	399

THE
UNREPEALED GENERAL ACTS

OF
THE GOVERNOR GENERAL IN COUNCIL.

THE SPECIFIC RELIEF ACT, 1877.

CONTENTS.

PART I.

PREAMBLE

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. [*Repealed.*]
3. Interpretation-clause.
Words defined in Contract Act.
4. Savings.
5. Specific relief how given.
6. Preventive relief.
7. Relief not granted to enforce penal law.

PART II.
OF SPECIFIC RELIEF.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(a) *Possession of Immoveable Property.*

8. Recovery of specific immoveable property.
9. Suit by person dispossessed of immoveable property.

(b) Possession of Moveable Property.

SECTIONS.

10. Recovery of specific moveable property.
11. Liability of person in possession, not as owner, to deliver to person entitled to immediate possession.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(a) Contracts which may be specifically enforced.

12. Cases in which specific performance enforceable.
13. Contracts of which the subject has partially ceased to exist.
14. Specific performance of part of contract where part unperformed is small.
15. Specific performance of part of contract where part unperformed is large.
16. Specific performance of independent part of contract.
17. Bar in other cases of specific performance of part of contract.
18. Purchaser's rights against vendor with imperfect title.
19. Power to award compensation in certain cases.
20. Liquidation of damages not a bar to specific performance.

(b) Contracts which cannot be specifically enforced.

21. Contracts not specifically enforceable.

(c) Of the Discretion of the Court.

22. Discretion as to decreeing specific performance.

(d) For whom Contracts may be specifically enforced.

23. Who may obtain specific performance.

(e) For whom Contracts cannot be specifically enforced.

24. Personal bars to the relief.
25. Contracts to sell property by one who has no title, or who is a voluntary settler.

(f) For whom Contracts cannot be specifically enforced, except with a Variation.

26. Non-enforcement except with variation.

(g) Against whom Contracts may be specifically enforced.

27. Relief against parties and persons claiming under them by subsequent title.

(h) *Against whom Contracts cannot be specifically enforced.*

SECTIONS.

28. What parties cannot be compelled to perform.

(i) *The effect of dismissing a Suit for Specific Performance.*

29. Bar of suit for breach after dismissal.

(j) *Awards and Directions to execute Settlements.*

30. Application of preceding sections to awards and testamentary directions to execute settlements.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

- 31. When instrument may be rectified.
 - 32. Presumption as to intent of parties.
 - 33. Principles of rectification.
 - 34. Specific enforcement of rectified contract.
-

CHAPTER IV.

OF THE RESCISSION OF CONTRACTS.

- 35. When rescission may be adjudged.
 - 36. Rescission for mistake.
 - 37. Alternative prayer for rescission in suit for specific performance.
 - 38. Court may require party rescinding to do equity.
-

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

- 39. When cancellation may be ordered.
 - 40. What instruments may be partially cancelled.
 - 41. Power to require party for whom instrument is cancelled to make compensation.
-

CHAPTER VI.

OF DECLARATORY DECREES.

- 42. Discretion of Court as to declarations of status or right. Bar to such declaration.
- 43. Effect of declaration.

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

SECTIONS.

44. Appointment of Receivers discretionary.
Reference to Code of Civil Procedure.
-

CHAPTER VIII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

45. Power to order public servants and others to do certain specific acts.
Exemptions from such power.
46. Application how made.
Procedure thereon.
Order in alternative.
47. Peremptory order.
48. Execution of, and appeal from, orders.
49. Costs.
50. Bar to issue of *mandamus*.
51. Power to frame rules.
-

PART III.

OF PREVENTIVE RELIEF.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

52. Preventive relief how granted.
53. Temporary injunctions.
Perpetual injunctions.
-

CHAPTER X.

OF PERPETUAL INJUNCTIONS.

54. Perpetual injunctions when granted.
55. Mandatory injunctions.
56. Injunction when refused.
57. Injunction to perform negative agreement.
-

SCHEDULE.

[ENACTMENTS REPEALED.]

Repealed.

ACT No. I OF 1877.¹

[7th February, 1877.]

An Act to define and amend the law relating to certain kinds of Specific Relief.

WHEREAS it is expedient to define and amend the law relating to certain kinds of specific relief obtainable in civil suits; It is hereby enacted as follows:—

Pream

PART I.

PRELIMINARY.

1. This Act may be called the Specific Relief Act, 1877.

Short

¹ For the Statement of Objects and Reasons, see Gazette of India, 1875, Pt. V, p. 258; for the Report of the Select Committee, see *ibid.*, 1876, Pt. V, p. 1445; for discussions in Council, see *ibid.*, 1875, Supplement, pp. 981 and 1025; *ibid.*, 1876, Supplement, p. 1284, and *ibid.*, 1877, Supplement, p. 177.

This Act has been declared in force in the Town of Mandalay by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6, see Burma Code, Ed. 1889, p. 363.

It has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to the following Scheduled Districts, namely:—

the Scheduled Districts of the Punjab	See Gazette of India, 1877, Pt. I, p. 562.
the Districts of Kámrup, Naugong, Darrang, Sibságar, Lakhimpur, Goalpara (excluding the Eastern Dvārs), Sylhet and Cachar (excluding the North Cachar Hills)	<i>ib.</i> , 1877, Pt. I, p. 662.
the Districts of Hazáribágh, Lohárdaga [including the present District of Palaman, separated in 1894] and Mánbhūm, and Pargana Dhálbhūm in the District of Singbhūm	<i>ib.</i> , 1878, Pt. II, p. 82.
the Scheduled Districts of the Central Provinces	<i>ib.</i> , 1879, Pt. I, p. 772.
Sind	<i>ib.</i> , 1880, Pt. I, p. 676.
Coorg	<i>ib.</i> , 1882, Pt. I, p. 217.
Western Jálpaiguri	<i>ib.</i> , 1882, Pt. I, p. 511.
Upper Burma (except the Shan States)	<i>ib.</i> , 1893, Pt. II, p. 272.
That portion of the Jálpaiguri District known as the Western Dvārs	<i>ib.</i> , 1896, Pt. I, p. 44.
Kumáon and Garhwál and the Taráí Parganas (except s. 9)	<i>ib.</i> , 1895, Pt. I, p. 573.
Ajmere and Morwára	<i>ib.</i> , 1897, Pt. II, p. 1415.

S. 9 has been extended, by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), to the Taluks of Bhadráchalam and Rakapilli and the Rampá Country, see Gazette of India, 1879, Pt. I, p. 630; and to Kumáon, Garhwál, the Taráí Parganas, the scheduled portion of the Mirzápur District, and Jaunsar Báwar, see Gazette of India, 1886, Pt. I, p. 452.

S. 9 has been declared in force in British Baluchistan by the Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, printed, Baluchistan Code, Ed. 1890, p. 69, and also in Upper Burma generally (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6, printed, Burma Code, Ed. 1889, p. 363.

(Part I.—Preliminary. Sec. 3.)

Local extent.	It extends to the whole of British India, except the Scheduled Districts as defined in Act No. XIV of 1874. ¹
Commencement.	And it shall come into force on the first day of May, 1877. 2. [<i>Repeal of enactments.</i>] <i>Rep. by the Repealing and Amending Act, 1891 (XII of 1891).</i>
Interpretation-clause.	3. In this Act, unless there be something repugnant in the subject or context,— “obligation” includes every duty enforceable by law : “trust” includes every species of express, implied or constructive fiduciary ownership : “trustee” includes every person holding, expressly, by implication or constructively, a fiduciary character :

Illustrations.

(a) Z bequeaths land to A, “not doubting that he will pay thereout an annuity of Rs. 1,000 to B for his life.” A accepts the bequest. A is a trustee, within the meaning of this Act, for B, to the extent of the annuity.

(b) A is the legal, medical or spiritual adviser of B. By availing himself of his situation as such adviser, A gains some pecuniary advantage which might otherwise have accrued to B. A is a trustee, for B, within the meaning of this Act, of such advantage.

(c) A, being B's banker, discloses for his own purpose the state of B's account. A is a trustee, within the meaning of this Act, for B, of the benefit gained by him by means of such disclosure.

(d) A, the mortgagee of certain leaseholds, renews the lease in his own name. A is a trustee, within the meaning of this Act, of the renewed lease, for those interested in the original lease.

(e) A, one of several partners, is employed to purchase goods for the firm. A, unknown to his co-partners, supplies them, at the market-price, with goods previously bought by himself when the price was lower, and thus makes a considerable profit. A is a trustee for his co-partners, within the meaning of this Act, of the profit so made.

(f) A, the manager of B's indigo-factory, becomes agent for C, a vendor of indigo-seed, and receives, without B's assent, commission on the seed purchased from C for the factory. A is a trustee, within the meaning of this Act, for B, of the commission so received.

(g) A buys certain land with notice that B has already contracted to buy it. A is a trustee, within the meaning of this Act, for B, of the land so bought.

(h) A buys land from B, having notice that C is in occupation of the land. A omits to make any inquiry as to the nature of C's interest therein. A is a trustee, within the meaning of this Act, for C, to the extent of that interest.

“Settlement” means any instrument (other than a will or codicil as defined by the Indian Succession Act,² whereby the destination or devolution

X of 1865.

¹ For Act XIV of 1874, see General Acts, Vol. II, Ed. 1898, p. 467.

² For Act X of 1865, see General Acts, Vol. I, Ed. 1898, p. 468.

(Part I.—Preliminary. Secs. 4-7. Part II.—Of Specific Relief. Chapter.
I.—Of recovering Possession of Property. Sec. 8.)

of successive interests in moveable or immoveable property is disposed of or is agreed to be disposed of :

IX of 1872. and all words occurring in this Act, which are defined in the Indian Contract Act, 1872,¹ shall be deemed to have the meanings respectively assigned to them by that Act. Words defined in Contract Act,

4. Except where it is herein otherwise expressly enacted, nothing in this Act shall be deemed— Savings.

- (a) to give any right to relief in respect of any agreement which is not a contract ;
- (b) to deprive any person of any right to relief, other than specific performance, which he may have under any contract ; or
- (c) to affect the operation of the Indian Registration Act,² on documents.

5. Specific relief is given—

- (a) by taking possession of certain property and delivering it to a claimant ;
- (b) by ordering a party to do the very act which he is under an obligation to do ;
- (c) by preventing a party from doing that which he is under an obligation not to do ;
- (d) by determining and declaring the rights of parties otherwise than by an award of compensation ; or
- (e) by appointing a receiver.

Specific relief how given.

6. Specific relief granted under clause (c) of section 5 is called preventive relief.

Preventive relief.

7. Specific relief cannot be granted for the mere purpose of enforcing a penal law.

Relief not granted to enforce penal law.

PART II. OF SPECIFIC RELIEF.

CHAPTER I.

OF RECOVERING POSSESSION OF PROPERTY.

(a) Possession of Immoveable Property.

XIV of 1892. 8. A person entitled to the possession of specific immoveable property may recover it in the manner prescribed by the Code of Civil Procedure.³ Recovery of specific immoveable property.

¹ For Act IX of 1872, see General Acts, Vol. II, Ed. 1898, p. 299.

² See now Act III of 1877, printed, *infra*, p. 41.

³ Printed, General Acts, Vol. IV.

(Part II.—Of Specific Relief. Chapter I.—Of recovering Possession of Property. Secs. 9-11.)

Suit by person dispossessed of immovable property.

¹ 9. If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit * * * ² recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(b) Possession of Moveable Property.

Recovery of specific moveable property.

10. A person entitled to the possession of specific moveable property may recover the same in the manner prescribed by the Code of Civil Procedure.³

EXPLANATION 1.—A trustee may sue under this section for the possession of property to the beneficial interest in which the person for whom he is trustee is entitled.

EXPLANATION 2.—A special or temporary right to the present possession of property is sufficient to support a suit under this section.

Illustrations.

(a) A bequeaths land to B for his life, with remainder to C. A dies. B enters on the land, but C, without B's consent, obtains possession of the title-deeds. B may recover them from C.

(b) A pledges certain jewels to B to secure a loan. B disposes of them before he is entitled to do so. A, without having paid or tendered the amount of the loan, sues B for possession of the jewels. The suit should be dismissed, as A is not entitled to their possession, whatever right he may have to secure their safe custody.

(c) A receives a letter addressed to him by B. B gets back the letter without A's consent. A has such a property therein as entitles him to recover it from B.

(d) A deposits books and papers for safe custody with B. B loses them and C finds them, but refuses to deliver them to B when demanded. B may recover them from C, subject to C's right, if any, under section 168 of the Indian Contract Act, 1872.⁴

(e) A, a warehouse-keeper, is charged with the delivery of certain goods to Z, which B takes out of A's possession. A may sue B for the goods.

IX of 1872.

Liability of person in possession, not as owner,

11. Any person having the possession or control of a particular article of moveable property, of which he is not the owner, may be compelled specifically

¹ But *see* as to tenancies in the Punjab, the Punjab Tenancy Act, 1887 (XVI of 1887), s. 51, printed, Punjab Code, Ed. 1888, p. 296.

² The words "instituted within six months from the date of the dispossession," were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

³ *See* now the Code of Civil Procedure (Act XIV of 1882), printed, General Acts, Vol. IV.

⁴ For Act IX of 1872, *see* General Acts, Vol. II, p. 299.

(Part II.—Of Specific Relief. Chapter I.—Of recovering Possession of Property. Sec. 11. Chapter II.—Of the Specific Performance of Contracts. Sec. 12.)

to deliver it to the person entitled to its immediate possession, in any of the following cases :—

to deliver to person entitled to immediate possession.

- (a) when the thing claimed is held by the defendant as the agent or trustee of the claimant ;
- (b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed ;
- (c) when it would be extremely difficult to ascertain the actual damage caused by its loss ;
- (d) when the possession of the thing claimed has been wrongfully transferred from the claimant.

Illustrations—

of clause (a)—

A, proceeding to Europe, leaves his furniture in charge of B as his agent during his absence. B, without A's authority, pledges the furniture to C, and C, knowing that B had no right to pledge the furniture, advertises it for sale. C may be compelled to deliver the furniture to A, for he holds it as A's trustee.

of clause (b)—

Z has got possession of an idol belonging to A's family, and of which A is the proper custodian. Z may be compelled to deliver the idol to A.

of clause (c)—

A is entitled to a picture by a dead painter and a pair of rare China vases, B has possession of them. The articles are of too special a character to bear an ascertainable market-value. B may be compelled to deliver them to A.

CHAPTER II.

OF THE SPECIFIC PERFORMANCE OF CONTRACTS.

(a) *Contracts which may be specifically enforced.*

12. Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced—

Cases in which specific performance enforceable,

- (a) when the act agreed to be done is in the performance, wholly or partly, of a trust ;
- (b) when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done ;
- (c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief ; or

(Part II.—Of *Specific Relief*. Chapter II.—Of the *Specific Performance of Contracts*. Sec. 12.)

(d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

EXPLANATION.—Unless and until the contrary is proved, the Court shall presume that the breach of a contract to transfer immoveable property cannot be adequately relieved by compensation in money, and that the breach of a contract to transfer moveable property can be thus relieved.

Illustrations—

of clause (a) —

¹ A holds certain stock in trust for B. A wrongfully disposes of the stock. The law creates an obligation on A to restore the same quantity of stock to B, and B may enforce specific performance of this obligation.

of clause (b) —

A agrees to buy, and B agrees to sell, a picture by a dead painter and two rare China vases. A may compel B specifically to perform this contract, for there is no standard for ascertaining the actual damage which would be caused by its non-performance.

of clause (c) —

A contracts with B to sell him a house for Rs. 1,000. B is entitled to a decree directing A to convey the house to him, he paying the purchase-money.

In consideration of being released from certain obligations imposed on it by its Act of Incorporation, a railway-company contract with Z to make an archway through their railway to connect lands of Z severed by the railway, to construct a road between certain specified points, to pay a certain annual sum towards the maintenance of this road, and also to construct a siding and a wharf as specified in the contract. Z is entitled to have this contract specifically enforced, for his interest in its performance cannot be adequately compensated for by money ; and the Court may appoint a proper person to superintend the construction of the archway, road, siding and wharf.

A contracts to sell, and B contracts to buy, a certain number of railway-shares of a particular description. A refuses to complete the sale. B may compel A specifically to perform this agreement, for the shares are limited in number and not always to be had in the market, and their possession carries with it the status of a shareholder, which cannot otherwise be procured.

A contracts with B to paint a picture for B, who agrees to pay therefor Rs. 1,000. The picture is painted. B is entitled to have it delivered to him on payment or tender of the Rs. 1,000.

of clause (d) —

A transfers without endorsement, but for valuable consideration, a promissory note to B. A becomes insolvent, and C is appointed his assignee, B may compel C to endorse the note

¹ This Illustration is repealed wherever the Indian Trusts, Act, 1882 (II of 1882), is in force—see Act II of 1882, ss. 1 and 2, printed, General Acts, Vol. IV,

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Secs. 13-15.)

for C has succeeded to A's liabilities and a decree for pecuniary compensation for not endorsing the note would be fruitless.

13. Notwithstanding anything contained in section 56 of the Indian Contract Act,¹ a contract is not wholly impossible of performance because a portion of its subject-matter, existing at its date, has ceased to exist at the time of the performance.

Contract of which the subject has partially ceased to exist.

Illustrations.

(a) A contracts to sell a house to B for a lakh of rupees. The day after the contract is made, the house is destroyed by a cyclone. B may be compelled to perform his part of the contract by paying the purchase-money.

(b) In consideration of a sum of money payable by B, A contracts to grant an annuity to B for B's life. The day after the contract has been made, B is thrown from his horse and killed. B's representative may be compelled to pay the purchase-money.

14. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the Court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

Specific performance of part of contract where part unperformed is small.

Illustrations.

(a) A contracts to sell B a piece of land consisting of 100 bighás. It turns out that 98 bighás of the land belong to A, and the two remaining bighás to a stranger, who refuses to part with them. The two bighás are not necessary for the use or enjoyment of the 98 bighás, nor so important for such use or enjoyment that the loss of them may not be made good in money. A may be directed at the suit of B to convey to B the 98 bighás and to make compensation to him for not conveying the two remaining bighás; or B may be directed, at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase-money, less a sum awarded as compensation for the deficiency.

(b) In a contract for the sale and purchase of a house and lands for two lákhs of rupees, it is agreed that part of the furniture should be taken at a valuation. The Court may direct specific performance of the contract notwithstanding the parties are unable to agree as to the valuation of the furniture, and may either have the furniture valued in the suit and include it in the decree for specific performance, or may confine its decree to the house.

15. Where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed forms a considerable portion of the whole, or does not admit of compensation in money, he is not entitled to obtain a decree for specific performance. But the Court may, at the suit of the other party, direct the party in default to perform specifically so much of

Specific performance of part of contract where part unperformed is large.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Secs. 16-18.)

his part of the contract as he can perform, provided that the plaintiff relinquishes all claim to further performance, and all right to compensation either for the deficiency, or for the loss or damage sustained by him through the default of the defendant.

Illustrations.

(a) A contracts to sell to B a piece of land consisting of 100 bighás. It turns out that 50 bighás of the land belong to A, and the other 50 bighás to a stranger, who refuses to part with them. A cannot obtain a decree against B for the specific performance of the contract; but if B is willing to pay the price agreed upon, and to take the 50 bighás which belong to A, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey those 50 bighás to him on payment of the purchase-money.

(b) A contracts to sell to B an estate with a house and garden for a lakh of rupees. The garden is important for the enjoyment of the house. It turns out that A is unable to convey the garden. A cannot obtain a decree against B for the specific performance of the contract, but if B is willing to pay the price agreed upon, and to take the estate and house without the garden, waiving all right to compensation either for the deficiency or for loss sustained by him through A's neglect or default, B is entitled to a decree directing A to convey the house to him on payment of the purchase-money.

Specific performance of independent part of contract.

16. When a part of a contract which, taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

Bar in other cases of specific performance of part of contract. Purchaser's rights against vendor with imperfect title.

17. The Court shall not direct the specific performance of a part of a contract, except in cases coming under one or other of the three last preceding sections.

18. Where a person contracts to sell or let certain property, having only an imperfect title thereto, the purchaser or lessee (except as otherwise provided by this Chapter) has the following rights :—

- (a) if the vendor or lessor has subsequently to the sale or lease acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest ;
- (b) where the concurrence of other persons is necessary to validate the title, and they are bound to convey at the vendor's or lessor's request, the purchaser or lessee may compel him to procure such concurrence ;
- (c) where the vendor professes to sell unincumbered property, but the property is mortgaged for an amount not exceeding the purchase-money, and the vendor has in fact only a right to redeem it,

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Sec. 19.)

the purchaser may compel him to redeem the mortgage and to obtain a conveyance from the mortgagee ;

- (d) where the vendor or lessor sues for specific performance of the contract, and the suit is dismissed on the ground of his imperfect title, the defendant has a right to a return of his deposit (if any) with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest of the vendor or lessor in the property agreed to be sold or let.

19. Any person suing for the specific performance of a contract may also ask for compensation for its breach, either in addition to, or in substitution for, such performance.

Power to award compensation in certain cases.

If in any such suit the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant and that the plaintiff is entitled to compensation for that breach, it shall award him compensation accordingly.

If in any such suit the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

Compensation awarded under this section may be assessed in such manner as the Court may direct.

EXPLANATION.—The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.

Illustrations—

of the second paragraph—

A contracts to sell a hundred maunds of rice to B. B brings a suit to compel A to perform the contract or to pay compensation. The Court is of opinion that A has made a valid contract and has broken it, without excuse, to the injury of B, but that specific performance is not the proper remedy. It shall award to B such compensation as it deems just.

of the third paragraph—

A contracts with B to sell him a house for Rs. 1,000, the price to be paid and the possession given on the 1st January, 1877. A fails to perform his part of the contract, and B brings his suit for specific performance and compensation, which is decided in his favour on the 1st January, 1878. The decree may, besides ordering specific performance, award to B compensation for any loss which he has sustained by A's refusal.

of the Explanation—

A, a purchaser, sues B, his vendor, for specific performance of a contract for the sale of a patent. Before the hearing of the suit the patent expires. The Court may award A

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Secs. 20-21.)

compensation for the non-performance of the contract, and may, if necessary, amend the plaint for that purpose.

A sues for the specific performance of a resolution passed by the Directors of a public company, under which he was entitled to have a certain number of shares allotted to him, and for compensation for the non-performance of the resolution. All the shares had been allotted before the institution of the suit. The Court may, under this section, award A compensation for the non-performance.

Liquidation of damages not a bar to specific performance.

20. A contract, otherwise proper to be specifically enforced, may be thus enforced, though a sum be named in it as the amount to be paid in case of its breach, and the party in default is willing to pay the same.

Illustration.

A contracts to grant B an under-lease of property held by A under C, and that he will apply to C for a license necessary to the validity of the under-lease, and that, if the license is not procured, A will pay B Rs. 10,000. A refuses to apply for the license and offers to pay B the Rs. 10,000. B is nevertheless entitled to have the contract specifically enforced if C consents to give the license.

(b) *Contracts w^hich cannot be specifically enforced.*

Contracts not specifically enforceable.

21. The following contracts cannot be specifically enforced:—

- (a) a contract for the non-performance of which compensation in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature, is such, that the Court cannot enforce specific performance of its material terms;
- (c) a contract the terms of which the Court cannot find with reasonable certainty;
- (d) a contract which is in its nature revocable;
- (e) a contract made by trustees either in excess of their powers or in breach of their trust;
- (f) a contract made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;
- (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;
- (h) a contract of which a material part of the subject-matter, supposed by both parties to exist, has, before it has been made, ceased to exist.

And, save as provided by the Code of Civil Procedure,¹ no contract to refer a controversy to arbitration shall be specifically enforced; but if any person who

¹ See now the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Sec. 21.)

has made such a contract and has refused to perform it sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

Illustrations—

to (a)—

A contracts to sell, and B contracts to buy, a lakh of rupees in the four per cent. loan of the Government of India :

A contracts to sell, and B contracts to buy, 40 chests of indigo at Rs. 1,000 per chest :

In consideration of certain property having been transferred by A to B, B contracts to open a credit in A's favour to the extent of Rs. 10,000, and to honour A's drafts to that amount.

The above contracts cannot be specifically enforced, for in the first and second both A and B, and in the third A, would be reimbursed by compensation in money.

to (b)—

A contracts to render personal service to B :

A contracts to employ B on personal service :

A, an author, contracts with B, a publisher, to complete a literary work.

B cannot enforce specific performance of these contracts.

A contracts to buy B's business at the amount of a valuation to be made by two valuers one to be named by A and the other by B. A and B each name a valuer, but before the valuation is made A instructs his valuer not to proceed.

By a charter-party entered into in Calcutta between A, the owner of a ship, and B, the charterer, it is agreed that the ship shall proceed to Rangoon, and there load a cargo of rice, and thence proceed to London, freight to be paid, one-third on arrival at Rangoon, and two-thirds on delivery of the cargo in London :

A lets land to B and B contracts to cultivate it in a particular manner for three years next after the date of the lease :

A and B contract that, in consideration of annual advances to be made by A, B will for three years next after the date of the contract grow particular crops on the land in his possession and deliver them to A when cut and ready for delivery :

A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B, he will paint a picture for B :

A contracts with B to execute certain works which the Court cannot superintend :

A contracts to supply B with all the goods of a certain class which B may require :

A contracts with B to take from B a lease of a certain house for a specified term, at a specified rent, "if the drawing-room is handsomely decorated," even if it is held to have so much certainty that compensation can be recovered for its breach :

A contracts to marry B :

The above contracts cannot be specifically enforced.

to (c)—

A, the owner of a refreshment-room, contracts with B to give him accommodation there for the sale of his goods and to furnish him with the necessary appliances. A refuses to

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Sec. 22.)

perform his contract. The case is one for compensation and not for specific performance, the amount and nature of the accommodation and appliances being undefined.

to (d)—

A and B contract to become partners in a certain business, the contract not specifying the duration of the proposed partnership. This contract cannot be specifically performed, for if it were so performed, either A or B might at once dissolve the partnership.

to (e)—

A is a trustee of land with power to lease it for seven years. He enters into a contract with B to grant a lease of the land for seven years, with a covenant to renew the lease at the expiry of the term. This contract cannot be specifically enforced.

The Directors of a company have power to sell the concern with the sanction of a general meeting of the shareholders.

They contract to sell it without any such sanction. This contract cannot be specifically enforced.

Two trustees, A and B, empowered to sell trust-property worth a lakh of rupees, contract to sell it to C for Rs. 30,000. The contract is so disadvantageous as to be a breach of trust. C cannot enforce its specific performance.

The promoters of a company for working mines contract that the company, when formed, shall purchase certain mineral property. They take no proper precautions to ascertain the value of such property, and in fact agree to pay an extravagant price therefor. They also stipulate that the vendors shall give them a bonus out of the purchase-money. This contract cannot be specifically enforced.

to (f)—

A company existing for the sole purpose of making and working a railway contracts for the purchase of a piece of land for the purpose of erecting a cotton-mill thereon. This contract cannot be specifically enforced.

to (g)—

A contracts to let for twenty-one years to B the right to use such part of a certain railway made by A as was upon B's land, and that B should have a right of running carriages over the whole line on certain terms, and might require A to supply the necessary engine-power, and that A should during the term keep the whole railway in good repair. Specific performance of this contract must be refused to B.

to (h)—

A contracts to pay an annuity to B for the lives of C and D. It turns out that, at the date of the contract, C, though supposed by A and B to be alive, was dead. The contract cannot be specifically performed.

(c) *Of the Discretion of the Court.*

Discretion
as to decree—

22. The jurisdiction to decree specific performance is discretionary, and the Court is not bound to grant such relief merely because it is lawful to do so ;

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Sec. 22.)

but the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a Court of appeal. ing specific performance.

The following are cases in which the Court may properly exercise a discretion not to decree specific performance :

I. Where the circumstances under which the contract is made are such as to give the plaintiff an unfair advantage over the defendant, though there may be no fraud or misrepresentation on the plaintiff's part.

Illustrations.

(a) A, a tenant for life of certain property, assigns his interest therein to B. C contracts to buy, and B contracts to sell, that interest. Before the contract is completed, A receives a mortal injury from the effects of which he dies the day after the contract is executed. If B and C were equally ignorant or equally aware of the fact, B is entitled to specific performance of the contract. If B knew the fact, and C did not, specific performance of the contract should be refused to B.

(b) A contracts to sell to B the interest of C in certain stock-in-trade. It is stipulated that the sale shall stand good, even though it should turn out that C's interest is worth nothing. In fact, the value of C's interest depends on the result of certain partnership-accounts, on which he is heavily in debt to his partners. This indebtedness is known to A, but not to B. Specific performance of the contract should be refused to A.

(c) A contracts to sell, and B contracts to buy, certain land. To protect the land from floods, it is necessary for its owner to maintain an expensive embankment. B does not know of this circumstance, and A conceals it from him. Specific performance of the contract should be refused to A.

(d) A's property is put up to auction. B requests C, A's attorney, to bid for him. C does this inadvertently and in good faith. The persons present, seeing the vendor's attorney bidding, think that he is a mere puffer and cease to compete. The lot is knocked down to B at a low price. Specific performance of the contract should be refused to B.

II. Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff.

Illustrations.

(e) A is entitled to some land under his father's will on condition that if he sells it within twenty-five years, half the purchase-money shall go to B. A, forgetting the condition, contracts, before the expiration of the twenty-five years, to sell the land to C. Here, the enforcement of the contract would operate so harshly on A, that the Court will not compel its specific performance in favour of C.

(f) A and B, trustees, join their beneficiary, C, in a contract to sell the trust-estate to D, and personally agree to exonerate the estate from heavy incumbrances to which it is subject. The purchase-money is not nearly enough to discharge those incumbrances, though, at the date of the contract, the vendors believed it to be sufficient. Specific performance of the contract should be refused to D.

(Part II.—Of *Specific Relief*. Chapter II.—Of the *Specific Performance of Contracts*. Sec. 23.)

(g) A, the owner of an estate, contracts to sell it to B, and stipulates that he, A, shall not be obliged to define its boundary. The estate really comprises a valuable property, not known to either to be part of it. Specific performance of the contract should be refused to B, unless he waives his claim to the unknown property.

(h) A contracts with B to sell him certain land, and to make a road to it from a certain railway-station. It is found afterwards that A cannot make the road without exposing himself to litigation. Specific performance of the part of the contract relating to the road should be refused to B, even though it may be held that he is entitled to specific performance of the rest with compensation for loss of the road.

(i) A, a lessee of mines, contracts with B, his lessor, that at any time during the continuance of the lease B may give notice of his desire to take the machinery and plant used in and about the mines, and that he shall have the articles specified in his notice delivered to him at a valuation on the expiry of the lease. Such a contract might be most injurious to the lessee's business, and specific performance of it should be refused to B.

(j) A contracts to buy certain land from B. The contract is silent as to access to the land. No right of way to it can be shown to exist. Specific performance of the contract should be refused to B.

(k) A contracts with B to buy from B's manufactory and not elsewhere all the goods of a certain class used by A in his trade. The Court cannot compel B to supply the goods, but if he does not supply them A may be ruined, unless he is allowed to buy them elsewhere. Specific performance of the contract should be refused to B.

The following is a case in which the Court may properly exercise a discretion to decree specific performance :—

III. Where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.

Illustration.

A sells land to a railway-company, who contract to execute certain works for his convenience. The company take the land and use it for their railway. Specific performance of the contract to execute the works should be decreed in favour of A.

(d) *For whom Contracts may be specifically enforced.*

Who may obtain specific performance.

23. Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by—

(a) any party thereto,

(b) the representative in interest, or the principal, of any party thereto : provided that, where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless where his part thereof has already been performed ;

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Sec. 24.)

- (c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder ;
- (d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainderman ;
- (e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant ;
- (f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach ;
- (g) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation ;
- (h) when the promoters of a public company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company.

(e) *For whom Contracts cannot be specifically enforced.*

24. Specific performance of a contract cannot be enforced in favour of a person— Personal bars to the relief.

- (a) who could not recover compensation for its breach ;
- (b) who has become incapable of performing, or violates, any essential term of the contract that on his part remains to be performed ;
- (c) who has already chosen his remedy and obtained satisfaction for the alleged breach of contract ; or
- (d) who, previously to the contract, had notice that a settlement of the subject-matter thereof (though not founded on any valuable consideration) had been made and was then in force.

Illustrations—

to clause (a)—

A, in the character of agent for B, enters into an agreement with C to buy C's house. A is in reality acting not as agent for B but on his own account. A cannot enforce specific performance of this contract.

to clause (b)—

A contracts to sell B a house and to become tenant thereof for a term of fourteen years from that date of the sale at a specified yearly rent. A becomes insolvent. Neither he nor his assignee can enforce specific performance of the contract.

(Part II.—Of *Specific Relief*. Chapter II.—Of the *Specific Performance of Contracts*. Sec. 25.)

A contracts to sell B a house and garden in which there are ornamental trees, a material element in the value of the property as a residence. A, without B's consent, fells the trees. A cannot enforce specific performance of the contract.

A, holding land under a contract with B for a lease, commits waste, or treats the land in an unhusbandlike manner. A cannot enforce specific performance of the contract.

A contracts to let, and B contracts to take, an unfinished house, B contracting to finish the house and the lease to contain covenants on the part of A to keep the house in repair. B finishes the house in a very defective manner: he cannot enforce the contract specifically though A and B may sue each other for compensation for breach of it.

to clause (c)—

A contracts to let, and B contracts to take, a house for a specified term at a specified rent. B refuses to perform the contract. A thereupon sues for, and obtains, compensation for the breach. A cannot obtain specific performance of the contract.

Contracts to sell property by one who has no title, or who is a voluntary settler.

25. A contract for the sale or letting of property, whether moveable or immoveable, cannot be specifically enforced in favour of a vendor or lessor—

- (a) who, knowing himself not to have any title to the property, has contracted to sell or let the same;
- (b) who, though he entered into the contract believing that he had a good title to the property, cannot, at the time fixed by the parties or by the Court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt;
- (c) who, previous to entering into the contract, has made a settlement (though not founded on any valuable consideration) of the subject-matter of the contract.

Illustrations.

(a) A, without C's authority, contracts to sell to B an estate which A knows to belong to C. A cannot enforce specific performance of this contract, even though C is willing to confirm it.

(b) A bequeaths his land to trustees, declaring that they may sell it with the consent in writing of B. B gives a general prospective assent in writing to any sale which the trustees may make. The trustees then enter into a contract with C to sell him the land. C refuses to carry out the contract. The trustees cannot specifically enforce this contract, as in the absence of B's consent to the particular sale to C, the title which they can give C is, as the law stands, not free from reasonable doubt.

(c) A, being in possession of certain land, contracts to sell it to Z. On enquiry it turns out that A claims the land as heir of B, who left the country several years before, and is generally believed to be dead, but of whose death there is no sufficient proof. A cannot compel Z specifically to perform the contract.

(d) A, out of natural love and affection, makes a settlement of certain property on his brothers and their issue, and afterwards enters into a contract to sell the property to a

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Sec. 26.)

stranger. A cannot enforce specific performance of this contract so as to override the settlement and thus prejudice the interests of the persons claiming under it.

(f) *For whom Contracts cannot be specifically enforced, except with a Variation.*

26. Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation to set up, in the following cases (namely):—

Non-enforcement except with variation.

- (a) where by fraud or mistake of fact the contract of which performance is sought is in terms different from that which the defendant supposed it to be when he entered into it ;
- (b) where by fraud, mistake of fact, or surprise the defendant entered into the contract under a reasonable misapprehension as to its effect as between himself and the plaintiff ;
- (c) where the defendant, knowing the terms of the contract and understanding its effect has entered into it relying upon some misrepresentation by the plaintiff, or upon some stipulation on the plaintiff's part, which adds to the contract, but which he refuses to fulfil ;
- (d) where the object of the parties was to produce a certain legal result, which the contract as framed is not calculated to produce ;
- (e) where the parties have, subsequently to the execution of the contract, contracted to vary it.

Illustrations.

(a) A, B and C sign a writing by which they purport to contract each to enter into a bond to D for Rs. 1,000. In a suit by D, to make A, B and C separately liable each to the extent of Rs. 1,000, they prove that the word "each" was inserted by mistake ; that the intention was that they should give a joint bond for Rs. 1,000. D can obtain the performance sought only with the variation thus set up.

(b) A sues B to compel specific performance of a contract in writing to buy a dwelling-house. B proves that he assumed that the contract included an adjoining yard, and the contract was so framed as to leave it doubtful whether the yard was so included or not. The Court will refuse to enforce the contract, except with the variation set up by B.

(c) A contracts in writing to let to B a wharf, together with a strip of A's land delineated in a map. Before signing the contract, B proposed orally that he should be at liberty to substitute for the strip mentioned in the contract another strip of A's land of the same dimensions, and to this A expressly assented. B then signed the written contract. A cannot obtain specific performance of the written contract, except with the variation set up by B.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Sec. 27.)

(d) A and B enter into negotiations for the purpose of securing land to B for his life, with remainder to his issue. They execute a contract, the terms of which are found to confer an absolute ownership on B. The contract so framed cannot be specifically enforced.

(e) A contracts in writing to let a house to B, for a certain term, at the rent of Rs. 100 per month, putting it first into tenantable repair. The house turns out to be not worth repairing, so, with B's consent, A pulls it down and erects a new house in its place: B contracting orally to pay rent at Rs. 120 per mensem. B then sues to enforce specific performance of the contract in writing. He cannot enforce it except with the variations made by the subsequent oral contract.

(g) Against whom Contracts may be specifically enforced.

Relief
against parties and persons claiming under them by subsequent title.

27. Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

- (a) either party thereto;
- (b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;
- (c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;
- (d) when a public company has entered into a contract and subsequently becomes amalgamated with another public company, the new company which arises out of the amalgamation;
- (e) when the promoters of a public company have, before its incorporation entered into a contract, the company: provided that the company has ratified and adopted the contract and the contract is warranted by the terms of the incorporation.

Illustrations

to clause (b)—

A contracts to convey certain land to B by a particular day. A dies intestate before that day without having conveyed the land. B may compel A's heir or other representative in interest to perform the contract specifically.

A contracts to sell certain land to B for Rs. 5,000. A afterwards conveys the land for Rs. 6,000 to C, who has notice of the original contract. B may enforce specific performance of the contract as against C.

A contracts to sell land to B for Rs. 5,000. B takes possession of the land. Afterwards A sells it to C for Rs. 6,000. C makes no enquiry of B relating to his interest in the land. B's possession is sufficient to affect C with notice of his interest, and he may enforce specific performance of the contract against C.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Sec. 28.)

A contracts, in consideration of Rs. 1,000, to bequeath certain of his lands to B. Immediately after the contract A dies intestate, and C takes out administration to his estate. B may enforce specific performance of the contract against C.

A contracts to sell certain land to B. Before the completion of the contract, A becomes a lunatic and C is appointed his committee. B may specifically enforce the contract against C.

to clause (c)—

A, the tenant for life of an estate, with remainder to B, in due exercise of a power conferred by the settlement under which he is tenant for life, contracts to sell the estate to C, who has notice of the settlement. Before the sale is completed, A dies. C may enforce specific performance of the contract against B.

A and B are joint tenants of land, his undivided moiety of which either may alien in his lifetime, but which, subject to that right, devolves on the survivor. A contracts to sell his moiety to C and dies. C may enforce specific performance of the contract against B.

(h) *Against whom Contracts cannot be specifically enforced.*

28. Specific performance of a contract cannot be enforced against a party thereto in any of the following cases :—

What parties cannot be compelled to perform.

- (a) if the consideration to be received by him is so grossly inadequate, with reference to the state of things existing at the date of the contract, as to be either by itself or coupled with other circumstances evidence of fraud or of undue advantage taken by the plaintiff;
- (b) if his assent was obtained by the misrepresentation (whether wilful or innocent), concealment, circumvention or unfair practices, of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled;
- (c) if his assent was given under the influence of mistake of fact, misapprehension or surprise: Provided that, when the contract provides for compensation in case of mistake, compensation may be made for a mistake within the scope of such provision, and the contract may be specifically enforced in other respects if proper to be so enforced.

Illustrations—

to clause (c)—

A, one of two executors, in the erroneous belief that he had the authority of his co-executor, enters into an agreement for the sale to B of his testator's property. B cannot insist on the sale being completed.

(Part II.—Of Specific Relief. Chapter II.—Of the Specific Performance of Contracts. Secs. 29-30. Chapter III.—Of the Rectification of Instruments. Sec. 31.)

A directs an auctioneer to sell certain land. A afterwards revokes the auctioneer's authority as to 20 bighás of this land, but the auctioneer inadvertently sells the whole to B, who has not notice of the revocation. B cannot enforce specific performance of the agreement.

(i) *The effect of dismissing a Suit for Specific Performance.*

Bar of suit for breach after dismissal.

29. The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be.

(j) *Awards and Directions to execute Settlements.*

Application of preceding sections to awards and testamentary directions to execute settlements.

30. The provisions of this Chapter as to contracts shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.

CHAPTER III.

OF THE RECTIFICATION OF INSTRUMENTS.

When instrument may be rectified.

31. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing does not truly express their intention, either party, or his representative in interest, may institute a suit to have the instrument rectified; and if the Court find it clearly proved that there has been fraud or mistake in framing the instrument, and ascertain the real intention of the parties in executing the same, the Court may in its discretion rectify the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

Illustrations.

(a) A, intending to sell to B his house and one of three godowns adjacent to it, executes a conveyance prepared by B, in which, through B's fraud, all three godowns are included. Of the two godowns which were fraudulently included, B gives one to C and lets the other to D for a rent, neither C nor D having any knowledge of the fraud. The conveyance may, as against B and C, be rectified so as to exclude from it the godown given to C; but it cannot be rectified so as to affect D's lease.

(b) By a marriage settlement, A, the father of B, the intended wife, covenants with C, the intended husband, to pay to C, his executors, administrators and assigns, during A's life, an annuity of Rs. 5,000. C dies insolvent and the official assignee claims the annuity from A. The Court, on finding it clearly proved that the parties always intended that this annuity should be paid as a provision for B and her children, may rectify the settlement and decree that the assignee has no right to any part of the annuity.

(Part II.—Of Specific Relief. Chapter III.—Of the Rectification of Instruments. Secs 32-34. Chapter IV.—Of the Rescission of Contracts. Sec. 35.)

32. For the purpose of rectifying a contract in writing, the Court must be satisfied that all the parties thereto intended to make an equitable and conscientious agreement. Presumption as to intent of parties.

33. In rectifying a written instrument, the Court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the enquiry what the language of the instrument was intended to be. Principles of rectification.

34. A contract in writing may be first rectified and then, if the plaintiff has so prayed in his plaint and the Court thinks fit, specifically enforced. Specific enforcement of rectified contract.

Illustration.

A contracts in writing to pay his attorney, B, a fixed sum in lieu of costs. The contract contains mistakes as to the name and rights of the client, which, if construed strictly, would exclude B from all rights under it. B is entitled, if the Court thinks fit, to have it rectified, and to an order for payment of the sum, as if at the time of its execution it had expressed the intention of the parties.

CHAPTER IV

OF THE RESCISSION OF CONTRACTS.

35. Any person interested in a contract in writing¹ may sue to have it rescinded, and such rescission may be adjudged by the Court in any of the following cases, namely:— When rescission may be adjudged.

- (a) where the contract is voidable or terminable by the plaintiff;
- (b) where the contract is unlawful for causes not apparent on its face, and the defendant is more to blame than the plaintiff;
- (c) where a decree for specific performance of a contract of sale, or of a contract to take a lease, has been made, and the purchaser or lessee makes default in payment of the purchase-money or other sums which the Court has ordered him to pay.

When the purchaser or lessee is in possession of the subject-matter, and the Court finds that such possession is wrongful, the Court may also order him to pay to the vendor or lessor the rents and profits, if any, received by him as such possessor.

In the same case, the Court may, by order in the suit in which the decree has been made and not complied with, rescind the contract, either so far as

¹ The words "in writing" are repealed wherever the Transfer of Property Act, 1882 (IV of 1882) is in force, see Act IV of 1882, ss. 1 and 2, printed, General Acts, Vol. IV.

(Part II.—Of Specific Relief. Chapter IV.—Of the Rescission of Contracts.
Secs. 36-38. Chapter V.—Of the Cancellation of Instruments. Sec. 39.)

regards the party in default, or altogether, as the justice of the case may require.

Illustrations—

to (a)—

A sells a field to B. There is a right of way over the field of which A has direct personal knowledge, but which he conceals from B. B is entitled to have the contract rescinded.

to (b)—

A, an attorney, induces his client B, a Hindu widow, to transfer property to him for the purpose of defrauding B's creditors. Here the parties are not equally in fault, and B is entitled to have the instrument of transfer rescinded.

Rescission
for mistake.

36. Rescission of a contract in writing¹ cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

Alternative
prayer for
rescission in
suit for
specific per-
formance.

37. A plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the Court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Court may
require party
rescinding to
do equity.

38. On adjudging the rescission of a contract, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

CHAPTER V.

OF THE CANCELLATION OF INSTRUMENTS.

When cancel-
lation may be
ordered.

39. Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

If the instrument has been registered under the Indian Registration Act,* the Court shall also send a copy of its decree to the officer in whose

¹ The words "in writing" are repealed wherever the Transfer of Property Act, 1882, is in force, see Act IV of 1882, ss. 1 and 2, printed, General Acts, Vol. IV.

² See now the Indian Registration Act, 1877 (III of 1877), printed, *infra*, p. 87.

(Part II.—Of Specific Relief. Chapter V.—Of the Cancellation of Instruments. Secs. 40-41. Chapter VI.—Of Declaratory Decrees. Sec. 42.)

office the instrument has been so registered ; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

Illustrations.

(a) A, the owner of a ship, by fraudulently representing her to be seaworthy, induces B, an underwriter, to insure her. B may obtain the cancellation of the policy.

(b) A conveys land to B, who bequeaths it to C and dies. Thereupon D gets possession of the land and produces a forged instrument stating that the conveyance was made to B in trust for him. C may obtain the cancellation of the forged instrument.

(c) A, representing that the tenants on his land were all at will, sells it to B, and conveys it to him by an instrument, dated the 1st January, 1877. Soon after that day, A fraudulently grants to C a lease of part of the lands, dated the 1st October, 1876, and procures the lease to be registered under the Indian Registration Act.¹ B may obtain the cancellation of this lease.

(d) A agrees to sell and deliver a ship to B, to be paid for by B's acceptances of four bills of exchange, for sums amounting to Rs. 30,000, to be drawn by A on B. The bills are drawn and accepted, but the ship is not delivered according to the agreement. A sues B on one of the bills. B may obtain the cancellation of all the bills.

40. Where an instrument is evidence of different rights or different obligations, the Court may, in a proper case, cancel it in part and allow it to stand for the residue.

What instruments may be partially cancelled.

Illustration.

A draws a bill on B, who endorses it to C, by whom it appears to be endorsed to D, who endorses it to E. C's endorsement is forged. C is entitled to have such endorsement cancelled, leaving the bill to stand in other respects.

41. On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Power to require party for whom instrument is cancelled to make compensation.

CHAPTER VI.²

OF DECLARATORY DECREES.

42. Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief :

Discretion of Court as to declaration of status or right.

¹ See now the Indian Registration Act, 1877 (III of 1877), printed, *infra*, p. 37.

² As to the Punjab, see also the Punjab Land-revenue Act, 1887 (XVII of 1887), s. 45, printed; Punjab Code, Ed. 1888, p. 335.

(Part II.—Of *Specific Relief*. Chapter VI.—Of *Declaratory Decrees*.
Sec. 43.)

Bar to such
declaration.

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

EXPLANATION.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee.

Illustrations.

(a) A is lawfully in possession of certain land. The inhabitants of a neighbouring village claim a right of way across the land. A may sue for a declaration that they are not entitled to the right so claimed.

(b) A bequeaths his property to B, C and D, “to be equally divided amongst all and each of them, if living at the time of my death, then amongst their surviving children.” No such children are in existence. In a suit against A’s executor, the Court may declare whether B, C and D took the property absolutely, or only for their lives, and it may also declare the interests of the children before their rights are vested.

(c) A covenants that, if he should at any time be entitled to property exceeding one lakh of rupees, he will settle it upon certain trusts. Before any such property accrues, or any persons entitled under the trusts are ascertained, he institutes a suit to obtain a declaration that the covenant is void for uncertainty. The Court may make the declaration.

(d) A alienates to B property in which A has merely a life interest. The alienation is invalid as against C, who is entitled as reversioner. The Court may in a suit by C against A and B declare that C is so entitled.

(e) The widow of a sonless Hindu alienates part of the property of which she is in possession as such. The person presumptively entitled to possess the property if he survive her may in a suit against the alienee, obtain a declaration that the alienation was made without legal necessity and was therefore void beyond the widow’s lifetime.

(f) A Hindu widow in possession of property adopts a son to her deceased husband. The person presumptively entitled to possession of the property on her death without a son may in a suit against the adopted son, obtain a declaration that the adoption was invalid.

(g) A is in possession of certain property. B, alleging that he is the owner of the property, requires A to deliver it to him. A may obtain a declaration of his right to hold the property.

(h) A bequeaths property to B for his life, with remainder to B’s wife and her children, if any, by B, but, if B die without any wife or children, to C. B has a putative wife, D, and children, but C denies that B and D were ever lawfully married, D and her children may, in B’s lifetime, institute a suit against C and obtain therein a declaration that they are truly the wife and children of B.

Effect of
declaration.

43. A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

(Part II.—Of Specific Relief. Chapter VII.—Of the Appointment of Receivers. Sec. 44. Chapter VIII.—Of the Enforcement of Public Duties. Sec. 45.)

Illustration.

A, a Hindu, in a suit to which B, his alleged wife, and her mother, are defendants, seeks a declaration that his marriage was duly solemnized and an order for the restitution of his conjugal rights. The Court makes the declaration and order. C, claiming that B is his wife, then sues A for the recovery of B. The declaration made in the former suit is not binding upon C.

CHAPTER VII.

OF THE APPOINTMENT OF RECEIVERS.

44. The appointment of a Receiver pending a suit is a matter resting in the discretion of the Court.

Appointment of Receivers discretionary.

The mode and effect of his appointment, and his rights, powers, duties and liabilities, are regulated by the Code of Civil Procedure.¹

Reference to Code of Civil Procedure.

CHAPTER VIII.

OF THE ENFORCEMENT OF PUBLIC DUTIES.

45. Any of the High Courts of Judicature at Fort William, Madras and Bombay may make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office, whether of a permanent or a temporary nature, or by any corporation or inferior Court of Judicature :

Power to order public servants and others to do certain specific acts.

Provided—

- (a) that an application for such order be made by some person whose property, franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act ;
- (b) that such doing or forbearing is, under any law for the time being in force, clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character ;
- (c) that in the opinion of the High Court such doing or forbearing is consonant to right and justice ;
- (d) that the applicant has no other specific and adequate legal remedy ; and
- (e) that the remedy given by the order applied for will be complete.

¹ See now the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV.

Exemptions
from such
power.

Nothing in this section shall be deemed to authorize any High Court—

- (f) to make any order binding on the Secretary of State for India in Council, on the Governor General in Council, on the Governor of Madras in Council, on the Governor of Bombay in Council, or on the Lieutenant-Governor of Bengal ;
- (g) to make any order on any other servant of the Crown, as such, merely to enforce the satisfaction of a claim upon the Crown ; or
- (h) to make any order which is otherwise expressly excluded by any law for the time being in force.

Application
how made.

Procedure
thereon.

Order in
alternative.

46. Every application under section 45 must be founded on an affidavit of the person injured, stating his right in the matter in question, his demand of justice and the denial thereof; and the High Court may, in its discretion, make the order applied for absolute in the first instance, or refuse it, or grant a rule to show cause why the order applied for should not be made.

If, in the last case, the person, Court or corporation complained of shows no sufficient cause, the High Court may first make an order in the alternative, either to do or forbear the act mentioned in the order, or to signify some reason to the contrary and make an answer thereto by such day as the High Court fixes in this behalf.

Peremptory
order.

47. If the person, Court or corporation to whom or to which such order is directed makes no answer, or makes an insufficient or a false answer, the High Court may then issue a peremptory order to do or forbear the act absolutely.

Execution
of, and appeal
from, orders.

48. Every order under this Chapter shall be executed, and may be appealed from, as if it were a decree made in the exercise of the ordinary original civil jurisdiction of the High Court.

Costs.

49. The costs of all applications and orders under this Chapter shall be in the discretion of the High Court.

Bar to issue
of *mandamus*.

50. Neither the High Court nor any Judge thereof shall hereafter issue any writ of *mandamus*.

Power to
frame rules.

51. Each of the said High Courts shall, as soon as conveniently may be, frame rules¹ to regulate the procedure under this Chapter; and, until such rules are framed, the practice of such Court as to applications for and grants of writs of *mandamus* shall apply, so far as may be practicable, to applications and orders under this Chapter.

¹ For rules made by the High Court of Bombay at Bombay under this section, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 163.

(Part III.—Of Preventive Relief. Chapter IX.—Of Injunctions generally.
Secs. 52-53. Chapter X.—Of Perpetual Injunctions. Sec. 54.)

PART III. OF PREVENTIVE RELIEF.

CHAPTER IX.

OF INJUNCTIONS GENERALLY.

52. Preventive relief is granted at the discretion of the Court by injunction, temporary or perpetual. Preventive relief how granted.

53. Temporary injunctions are such as are to continue until a specified time, or until the further order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure.¹ Temporary injunctions.

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit : the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff. Perpetual injunctions.

CHAPTER X.

OF PERPETUAL INJUNCTIONS.

54. Subject to the other provisions contained in, or referred to by, this Chapter, a perpetual injunction may be granted to prevent the breach of an obligation existing in favour of the applicant, whether expressly or by implication. Perpetual injunctions when granted.

When such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter II of this Act.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases (namely) :—

- (a) where the defendant is trustee of the property for the plaintiff ;
- (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion ;
- (c) where the invasion is such that pecuniary compensation would not afford adequate relief ;
- (d) where it is probable that pecuniary compensation cannot be got for the invasion ;
- (e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

¹ See now the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV.

(Part III.—Of Preventive Relief. Chapter X.—Of Perpetual Injunctions.
Sec. 54.)

EXPLANATION.—For the purpose of this section a trademark¹ is property.

Illustrations.

(a) A lets certain land to B, and B contracts not to dig sand or gravel thereout. A may sue for an injunction to restrain B from digging in violation of his contract.

(b) A trustee threatens a breach of trust. His co-trustees, if any, should, and the beneficial owners may, sue for an injunction to prevent the breach.

(c) The Directors of a public company are about to pay a dividend out of capital² or borrowed money. Any of the shareholders may sue for an injunction to restrain them.³

(d) The Directors of a fire and life-insurance company are about to engage in marine insurances. Any of the shareholders may sue for an injunction to restrain them.

(e) A, an executor, through misconduct or insolvency, is bringing the property of the deceased into danger. The Court may grant an injunction to restrain him from getting in the assets.

(f) A, a trustee for B, is about to make an imprudent sale of a small part of the trust-property. B may sue for an injunction to restrain the sale, even though compensation in money would have afforded him adequate relief.

(g) A makes a settlement (not founded on marriage or other valuable consideration) of an estate on B and his children. A then contracts to sell the estate to C. B or any of his children may sue for an injunction to restrain the sale.

(h) In the course of A's employment as a vakil, certain papers belonging to his client, B, come into his possession. A threatens to make these papers public, or to communicate their contents to a stranger. B may sue for an injunction to restrain A from so doing.

(i) A is B's medical adviser. He demands money of B which B declines to pay. A then threatens to make known the effect of B's communications to him as a patient. This is contrary to A's duty, and B may sue for an injunction to restrain him from so doing.

(j) A, the owner of two adjoining houses, lets one to B and afterwards lets the other to C. A and C begin to make such alterations in the house let to C as will prevent the comfortable enjoyment of the house let to B. B may sue for an injunction to restrain them from so doing.

(k) A lets certain arable lands to B for purposes of husbandry, but without any express contract as to the mode of cultivation. Contrary to the mode of cultivation customary in the district, B threatens to sow the lands with seed injurious thereto and requiring many years to eradicate. A may sue for an injunction to restrain B from sowing the lands in contravention of his implied contract to use them in a husbandlike manner.

(l) A, B and C are partners, the partnership being determinable at will. A threatens to do an act tending to the destruction of the partnership-property. B and C may, without seeking a dissolution of the partnership, sue for an injunction to restrain A from doing the act.

(m) A, a Hindu widow in possession of her deceased husband's property, commits destruction of the property without any cause sufficient to justify her in so doing. The heir-expectant may sue for an injunction to restrain her.

¹ As to law relating to trademarks, see Indian Penal Code (Act XLV of 1860), ss. 478 to 480, printed, General Acts, Vol. I, Ed. 1898, pp. 865—867.

² As to payment of interest out of capital by Railway Companies during construction, see the Indian Railway Companies Act, 1895 (X of 1895).

³ But see s. 3 of the Indian Railway Companies Act, 1895 (X of 1895), under which a Railway is permitted to pay interest on its paid-up share capital out of capital upon certain conditions and restrictions.

(Part III.—Of Preventive Relief. Chapter X.—Of Perpetual Injunctions.
Sec. 55.)

(n) A, B and C are members of an undivided Hindu family. A cuts timber growing on the family-property, and threatens to destroy part of the family-house and to sell some of the family-utensils. B and C may sue for an injunction to restrain him.

(o) A, the owner of certain houses in Calcutta, becomes insolvent. B buys them from the Official Assignee and enters into possession. A persists in trespassing on and damaging the houses, and B is thereby compelled, at considerable expense, to employ men to protect the possession. B may sue for an injunction to restrain further acts of trespass.

(p) The inhabitants of a village claim a right of way over A's land. In a suit against several of them, A obtains a declaratory decree that his land is subject to no such right. Afterwards each of the other villagers sues A for obstructing his alleged right of way over the land. A may sue for an injunction to restrain them.

(q) A, in an administration-suit to which a creditor, B, is not a party, obtains a decree for the administration of C's assets, B proceeds against C's estate for his debt. A may sue for an injunction to restrain B.

(r) A and B are in possession of contiguous lands and of the mines underneath them.¹ A works his mine so as to extend under B's mine and threatens to remove certain pillars which help to support B's mine. B may sue for an injunction to restrain him from so doing.

(s) A rings bells or makes some other unnecessary noise so near a house as to interfere materially and unreasonably with the physical comfort of the occupier, B. B may sue for an injunction restraining A from making the noise.

(t) A pollutes the air with smoke so as to interfere materially with the physical comfort of B and C, who carry on business in a neighbouring house. B and C may sue for an injunction to restrain the pollution.

(u) A infringes B's patent. If the Court is satisfied that the patent is valid and has been infringed, B may obtain an injunction to restrain the infringement.

(v) A pirates B's copyright. B may obtain an injunction to restrain the piracy, unless the work of which copyright is claimed is libellous or obscene.

(w) A improperly uses the trademark of B. B may obtain an injunction to restrain the user, provided that B's use of the trademark is honest.

(x) A, a tradesman, holds out B as his partner against the wish and without the authority of B. B may sue for an injunction to restrain A from so doing.

(y) A, a very eminent man, writes letters on family-topics to B. After the death of A and B, C, who is B's residuary legatee, proposes to make money by publishing A's letters. D, who is A's executor, has a property in the letters, and may sue for an injunction to restrain C from publishing them.

(z) A carries on a manufactory and B is his assistant. In the course of his business, A imparts to B a secret process of value. B afterwards demands money of A, threatening, in case of refusal, to disclose the process to C, a rival manufacturer. A may sue for an injunction to restrain B from disclosing the process.

55. When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts. Mandatory injunctions.

¹ As to the working of mines under land, the surface of which has been acquired by Government, see the Land Acquisition Mines Act, 1885 (XVIII of 1885), printed, General Acts, Vol. V.

(Part III.—Of Preventive Relief. Chapter X.—Of Perpetual Injunctions.
Sec. 56.)

Illustrations.

(a) A, by new buildings, obstructs lights to the access and use of which B has acquired a right under the Indian Limitation Act,¹ Part IV. B may obtain an injunction, not only to restrain A from going on with the buildings, but also to pull down so much of them as obstructs B's lights.

(b) A builds a house with eaves projecting over B's land. B may sue for an injunction to pull down so much of the eaves as so project.

(c) In the case put as illustration (i) to section 54, the Court may also order all written communications made by B, as patient, to A, as medical adviser, to be destroyed.

(d) In the case put as illustration (y) to section 54, the Court may also order A's letters to be destroyed.

(e) A threatens to publish statements concerning B which would be punishable under Chapter XXI of the Indian Penal Code.² The Court may grant an injunction to restrain the publication, even though it may be shown not to be injurious to B's property. XLV of 1860.

(f) A, being B's medical adviser, threatens to publish B's written communications with him, showing that B has led an immoral life. B may obtain an injunction to restrain the publication.

(g) In the cases put as illustrations (v) and (w) to section 54 and in illustrations (e) and (f) to this section, the Court may also order the copies produced by piracy, and the trade-marks, statements and communications, therein respectively mentioned, to be given up or destroyed.

Injunction
when
refused.

56. An injunction cannot be granted—

- (a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings ;
- (b) to stay proceedings in a Court not subordinate to that from which the injunction is sought ;
- (c) to restrain persons from applying to any legislative body ;
- (d) to interfere with the public duties of any department of the Government of India or the Local Government, or with the sovereign acts of a Foreign Government ;
- (e) to stay proceedings in any criminal matter ;
- (f) to prevent the breach of a contract the performance of which would not be specifically enforced.
- (g) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance ;
- (h) to prevent a continuing breach in which the applicant has acquiesced ;

¹ See now Act XV of 1877, printed, *infra*, p. 73.

² Printed, General Acts, Vol. I, Ed. 1898, p. 240.

(Part III.—Of Preventive Relief. Chapter X.—Of Perpetual Injunctions.
Sec. 57.)

- (i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust ;
- (j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court ;
- (k) where the applicant has no personal interest in the matter.

Illustrations.

(a) A seeks an injunction to restrain his partner, B, from receiving the partnership-debts and effects. It appears that A had improperly possessed himself of the books of the firm and refused B access to them. The Court will refuse the injunction.

(b) A manufactures and sells crucibles, designating them as "patent plumbago crucibles," though, in fact, they have never been patented. B pirates the designation. A cannot obtain an injunction to restrain the piracy.

(c) A sells an article called "Mexican Balm," stating that it is compounded of divers rare essences, and has sovereign medicinal qualities. B commences to sell a similar article to which he gives a name and description such as to lead people into the belief that they are buying A's Mexican Balm. A sues B for an injunction to restrain the sale. B shows that A's Mexican Balm consists of nothing but scented hog's lard. A's use of his description is not an honest one and he cannot obtain an injunction.

57. Notwithstanding section 56, clause (f), where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the Court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement : provided that the applicant has not failed to perform the contract so far as it is binding on him.

Injunction to perform negative agreement.

Illustrations.

(a) A contracts to sell to B for Rs. 1,000 the good-will of a certain business unconnected with business-premises, and further agrees not to carry on that business in Calcutta. B pays A the Rs. 1,000 but A carries on the business in Calcutta. The Court cannot compel A to send his customers to B, but B may obtain an injunction restraining A from carrying on the business in Calcutta.

(b) A contracts to sell to B the good-will of a business. A then sets up a similar business close by B's shop and solicits his old customers to deal with him. This is contrary to his implied contract, and B may obtain an injunction to restrain A from soliciting the customers, and from doing any act whereby their good-will may be withdrawn from B.

(c) A contracts with B to sing for twelve months at B's theatre and not to sing in public elsewhere. B cannot obtain specific performance of the contract to sing, but he is entitled to an injunction restraining A from singing at any other place of public entertainment.

(d) B contracts with A that he will serve him faithfully for twelve months as a clerk. A is not entitled to a decree for specific performance of this contract. But he is entitled to an injunction restraining B from serving a rival house as clerk.

(e) A contracts with B that, in consideration of Rs. 1,000 to be paid to him by B on a day fixed, he will not set up a certain business within a specified distance. B fails to pay the money. A cannot be restrained from carrying on the business within the specified distance.

SCHEDULE.

[ENACTMENTS REPEALED.]

[*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

ACT No. II OF 1877.¹

[14th February, 1877.]

An Act to amend Act No. XIII of 1875.

Pream

WHEREAS it is expedient to define the expression "High Court" as used in Act No. XIII of 1875² (*to amend the law relating to Probates and Letters of Administration*), sections 2, 3 and 4; It is hereby enacted as follows :—

XIII

"High Court"
defined in
Act XIII of
1875, ss. 2,
3 and 4.

1. The expression "High Court" in each of the said sections shall mean, and be deemed to have always meant,—

(a) a High Court for the time being established under the twenty-fourth and twenty-fifth of Victoria, chapter 104th :³

24 & 25 Vict.,
cap. 104.

(b) the Chief Court of the Punjab.

(c) the Court of the Recorder of Rangoon.

2. [*Saving of certain grants of probate and administration.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891.)*

¹ Short title, "The Probate and Administration Act, 1877." See the Indian Short Titles Act, 1897 (XIV of 1897).

For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V, p. 17; for Proceedings in Council, see *ibid.*, Supplement, pp. 89, 128 and 227.

This Act is declared in force in Upper Burma generally (except the Shan States), see first part of second schedule to the Upper Burma Laws Act, 1886 (XX of 1886);

the Santhal Parganas, see schedule to the Santhal Parganas' Settlement Regulation (III of 1872) as amended by the Santhal Parganas' Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol. I, Ed. 1889, p. 597.

² For the Probate and Administration Act, 1875 (XIII of 1875), see Vol. II of the General Acts, Ed. 1898, p. 505.

³ See the Indian High Courts Act, 1861, printed, Collection of Statutes relating to India, Vol. II, p. 713.

THE INDIAN REGISTRATION ACT, 1877.

CONTENTS.

PREAMBLE.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Commencement.
 2. Repeal of enactments.
 3. Interpretation-clause.
-

PART II.

OF THE REGISTRATION-ESTABLISHMENT.

4. Inspector General of Registration.
Branch Inspector General of Sindh.
 5. Districts and sub-districts.
 6. Registrars and Sub-Registrars.
 7. Offices of Registrar and Sub-Registrar.
 8. Inspectors of Registration-offices.
 9. Military cantonments may be declared sub-districts or districts.
 10. Absence of Registrar from his district or vacancy in his office.
 11. Absence of Registrar on duty in his district.
 12. Absence of Sub-Registrar or vacancy in his office.
 13. Appointments under sections 10, 11 or 12 to be reported to Government.
Suspension, removal and dismissal of officers.
 14. Remuneration and establishments of registering officers.
 15. Seals of registering officers.
 16. Register-books.
Forms.
Fire-proof boxes.
-

PART III.

OF REGISTRABLE DOCUMENTS.

17. Documents of which registration is compulsory.
Exception of—
composition-deeds ;
and of transfers of shares and debentures in Land Companies ;
documents merely creating right to obtain other documents.
Authorities to adopt.

SECTIONS.

18. Documents of which registration is optional.
 19. Documents in language not understood by registering officer.
 20. Documents containing interlineations, blanks, erasures or alterations.
 21. Description of parcels.
Documents containing maps or plans.
 22. Failure to comply with rules as to description of houses and land.
-

PART IV.

OF THE TIME OF PRESENTATION.

23. Time for presenting documents.
 24. Provision where delay in presentation is unavoidable.
 25. Documents executed out of British India.
 26. Provision where office is closed on last day of period for presentation.
 27. Wills may be presented or deposited at any time.
-

PART V.

OF THE PLACE OF REGISTRATION.

28. Place for registering documents relating to land.
 29. Place for registering other documents.
 30. Registration by Registrar.
Registration by Registrar at Presidency-town and Lahore.
 31. Registration or acceptance for deposit at private residence.
-

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Persons to present documents for registration.
 33. Powers-of-attorney recognizable for purposes of section 32.
Proviso as to persons infirm, or in jail, or exempt from appearing in Court.
 34. Enquiry before registration by registering officer.
 35. Procedure on admission of execution.
Procedure on denial of execution, etc.
-

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

36. Procedure where appearance of executant or witness is desired.
37. Officer or Court to issue and cause service of summons.
38. Persons exempt from appearance at registration-office.
39. Law as to summonses, commissions and witnesses.

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

SECTIONS.

40. Persons entitled to present wills and authorities to adopt.
41. Registration of wills and authorities to adopt.

PART IX.

OF THE DEPOSIT OF WILLS.

42. Deposit of wills.
43. Procedure on deposit of wills.
44. Withdrawal of sealed cover deposited under section 42.
45. Proceedings on death of depositor.
Re-deposit.
46. Saving of the Indian Succession Act, 1865, section 259.

PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

47. Time from which registered document operates.
48. Registered documents relating to property when to take effect against oral agreements.
49. Effect of non-registration of documents required to be registered.
50. Registered documents relating to land, of which registration is optional, to take effect against unregistered documents.

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A) As to the Register-books and Indexes.

51. Register-books to be kept in the several offices.
52. Endorsements on document presented.
Receipt for document.
Documents admitted to registration to be copied.
53. Entries to be numbered consecutively.
54. Current indexes and entries therein.
55. Indexes to be made by registering officers.
Extra particulars in indexes.
56. Copy of entries in Indexes Nos. I, II and III to be sent by Sub-Registrar to Registrar.
Such copy to be filed by Registrar.
57. Registering officers to allow inspection of certain books and indexes, and to give certified copies of entries.

(B) As to the Procedure on admitting to Registration.

SECTIONS.

- 58. Particulars to be endorsed on documents admitted to registration.
- 59. Such endorsements to be dated and signed by registering officer.
- 60. Certificate showing that document has been registered, and number and page of book in which it has been copied.
- 61. Endorsements and certificate to be copied.
Document to be returned.
- 62. Procedure on presenting document in language unknown to registering officer.
- 63. Power to administer oaths.
Record of substance of statements.

(C) Special Duties of Sub-Registrar.

- 64. Procedure on registration of document relating to land situate in several sub-districts.
- 65. Procedure where document relates to land situate in several districts.

(D) Special Duties of Registrar.

- 66. Procedure on registering documents relating to land.
- 67. Procedure on registration under section 30, clause (b).

(E) Of the controlling Powers of Registrars and Inspectors General.

- 68. Registrar to superintend and control Sub-Registrars.
- 69. Inspector General to superintend registration-offices.
His power to make rules.
- 70. His power to remit fines.

PART XII.

OF REFUSAL TO REGISTER.

- 71. Reasons for refusal to register to be recorded.
- 72. Power to reverse or alter orders of Sub-Registrar refusing registration on ground other than denial of execution.
- 73. Application where Sub-Registrar refuses to register on ground of denial of execution.
- 74. Procedure of Registrar on such application.
- 75. Order to register and procedure thereon.
- 76. Refusal by Registrar.
- 77. Suit in case of refusal.

PART XIII.

OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES.

- 78. Fees to be fixed by Local Government.
Alteration of fees.
- 79. Publication of fees.
- 80. Fees payable on presentation.

(Part I.—Preliminary. Sec. 1.)

PART XIV.

OF PENALTIES.

SECTIONS.

81. Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.
82. Penalty for certain other offences.
Making false statements before registering officer.
Delivering false copy or translation.
False personation.
Abetment of offences under this Act.
83. Registering officer may commence prosecutions.
84. Registering officers to be deemed public servants.

PART XV.

MISCELLANEOUS.

85. Destruction of unclaimed documents.
86. Registering officer not liable for thing *bona fide* done or refused in his official capacity.
87. Nothing so done invalidated by defect in appointment or procedure.
88. Registration of documents executed by Government officers or certain public functionaries.
89. Orders under Land Improvement Loans Act, 1883.

Exemptions from Act.

90. Exemption of certain documents executed by or in favour of Government.
91. Inspection and copies of such documents.
92. Burmese registration-rules confirmed.

ACT No. III OF 1877.¹

[14th February, 1877.]

An Act for the Registration of Documents.

WHEREAS it is expedient to amend the law relating to the registration of documents ; It is hereby enacted as follows : — Preamble.

PART I.

PRELIMINARY.

1. This Act may be called the Indian Registration Act, 1877 :

Short title.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1876, Pt. V, p. 545; for discussions in Council, see *ibid*, 1876, Supplement, pp. 714, 742, 756 and 1351; and *ibid*, 1877, Supplement, p. 228.

Ss. 54 (paragraphs 2 and 3) 59, 107 and 123 of the Transfer of Property Act, 1882 (IV of 1882), are to be read as supplemental to this Act, see Act IV of 1882, s. 4, printed, General Acts, Vol. IV.

(Part I.—Preliminary. Secs. 2-3.)

Local extent.

It extends to the whole of British India,¹ except such districts or tracts of country as the Local Government may from time to time, with the previous sanction of the Governor General in Council, exclude² from its operation ;

Commence-
ment.

And it shall come into force on the first day of April, 1877.

Repeal of
enactments.

³[The Local Government may, with the previous sanction of the Governor General in Council, cancel any order excluding districts or tracts of country from the operation of this Act.]

2. On and from that day Act No. VIII of 1871 shall be repealed.

But all appointments, notifications, rules and orders made, and all districts and sub-districts formed, and all offices established, and all tables of fees prepared, under such Act or any of the enactments thereby repealed shall be deemed to have been respectively made, formed, established and prepared under this Act, except in so far as such rules and orders may be inconsistent herewith.

References made in Acts passed before the first day of April, 1877, to the said Act, or to any enactment thereby repealed, shall be read as if made to the corresponding section of this Act.

Interpretation
clause.

3. In this Act, unless there be something repugnant in the subject or context,

¹ Act III of 1877 has been declared in force in the Santhál Parganas by the Santhál Parganas' Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas' Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol I., Ed. 1889, p. 597; and in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, printed, Baluchistan Code, Ed. 1890, p. 69.

It has further been declared, under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol II, p. 467, to be in force in the following Scheduled Districts, namely, the Districts of Házáribágh, Lohárdaga (including the present District of Palamau, separated in 1894), and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504.

It has been extended, by notification under s. 5 of the last-mentioned Act, to that part of the Khási and Jaintiá Hills District which is comprised within the limits of the Civil Station and Cantonment of Shillong, *see* Gazette of India, 1878, Pt. I, p. 662; and to the Mahál of Angul, *see* Gazette of India, 1887, Pt. I, p. 97.

It has been declared, by notification under s. 3 (b) of the same Act, to be not actually in force in the other parts of the Khási and Jaintiá Hills District, in the Gáo Hills or in the Nágá Hills District, *see* Gazette of India, 1878, Pt. I, p. 662.

It has ceased to be in force in the Dibrugarh Frontier Tract and the Mikir Hills Tract, *see* Assam Gazette, 1884, Pt. II, pp. 212 and 705, respectively, in the Mokokchang Subdivision of the Nágá Hills District and in the North Cachar Hills, *see* Assam Rules Manual, pp. 408 and 409.

In Upper Burma there is a special law as to registration, *see* the Upper Burma Registration Regulation, 1897 (II of 1897).

Certain pattás granted under ss. 36 and 37 of the Oudh Rent Act, 1886 (XXII of 1886), deemed good and valid without registration under this Act, *see* Act XXII of 1886, s. 156, printed, N.-W. P. & Oudh Code, Ed. 1892, p. 674.

² In exercise of this power the following districts have been excluded from the operation of the Act, namely :—

the Jeypur tracts, *see* Fort St. George Gazette, 1876, p. 773;

the Scheduled Districts of the Madras Presidency, *see* Fort St. George Gazette, 1881, Pt. I, p. 516;

the Arakan Hill Tracts District, *see* Burma Gazette, 1886, Pt. I, p. 247; and

the Karen Hills Subdivision, Toungoo and the Maliwan Subdivision and Tenasserim Township, Mergui, *see* Burma Gazette, 1893, Pt. I, p. 350.

³ This paragraph was added by the Repealing and Amending Act, 1891 (XII of 1891).

(Part II.—Of the Registration-establishment. Sec. 4.)

“lease” includes a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease :

“signature” and “signed” include and apply to the affixing of a mark :

“immoveable property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass :

“moveable property” includes standing timber, growing crops and grass, fruit upon and juice in trees, and property of every other description, except immoveable property :

“book” includes a portion of a book and also any number of sheets connected together with a view of forming a book or portion of a book :

“endorsement” and “endorsed” include and apply to an entry in writing by a registering officer on a rider or covering slip to any document tendered for registration under this Act :

“minor” means a person who, according to the personal law to which he is subject, has not attained majority :¹

“representative” includes the guardian of a minor and the committee or other legal curator of a lunatic or idiot :

“addition” means the place of residence, and the profession trade, rank and title (if any) of a person described, and, in the case of a Native, his caste (if any) and his father’s name, or where he is usually described as the son of his mother, then his mother’s name :

“District Court” includes the High Court in its ordinary original civil jurisdiction ; and

“district” and “sub-district” respectively mean a district and sub-district formed under this Act.

PART II.

OF THE REGISTRATION-ESTABLISHMENT.

4. The Local Government shall appoint an officer to be the Inspector General of Registration for the territories subject to such Government,²

or may, instead of making such appointment, direct that all or any of the powers and duties hereinafter conferred and imposed upon the Inspector General shall be exercised and performed by such officer or officers, and within such local limits, as the Local Government from time to time appoints in this behalf.

Inspector
General of
Registration.

¹ See the Indian Majority Act, 1875 (IX of 1875), printed, Vol. II of the General Acts, Ed. 1898, p. 503.

² For notification appointing an Inspector General for Lower Burma, see Burma Gazette, 1888, Part I, p. 380.

(Part II.—Of the Registration-establishment. Secs. 5-7.)

Branch In-
specter Gen-
eral of Sindh.

The Governor of Bombay in Council may also, with the previous consent of the Governor General in Council, appoint an officer to be Branch Inspector General of Sindh, who shall have all the powers of an Inspector General under this Act other than the power to frame rules hereinafter conferred.

Any Inspector General or the Branch Inspector General of Sindh may hold simultaneously any other office under Government.

Districts and
sub-districts.

5. For the purposes of this Act, the Local Government shall form districts and sub-districts, and shall prescribe, and may from time to time alter, the limits of such districts and sub-districts.¹

The districts and sub-districts formed under this section, together with the limits thereof, and every alteration of such limits, shall be notified in the local official Gazette.

Every such alteration shall take effect on such day after the date of the notification as is therein mentioned.

Registrars
and Sub-Re-
gistrars.

6. The Local Government may appoint such persons, whether public officers or not, as it thinks proper, to be Registrars of the several districts, and to be Sub-Registrars of the several sub-districts, formed as aforesaid, respectively.²

Offices of
Registrar
and Sub-
Registrar.

7. The Local Government shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar, or the offices of the Joint Sub-Registrars, and may amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar,³

and may authorise any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate :

Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.

¹ For notifications issued under this section by :—

(1) The Government of Bombay, *see* those quoted on pp. xxxviii and xlvii of the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896.

(2) Chief Commissioner of Assam, *see* Assam Manual of Local Rules and Orders, Ed. 1893, p. xxii.

(3) Chief Commissioner, Central Provinces, *see* Central Provinces, List of Local Rules and Orders, Ed. 1896, p. 22.

(4) The Government of Madras, *see* pp. 34 to 105 of the Madras List of Local Rules and Orders, Vol. I, Ed. 1898.

(5) The Government of the North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 50 to 52.

² For appointments made under this section by :—

(1) The Government of Bombay, *see* notifications quoted on pp. xlvii and xlviii of the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896.

(2) The Government of Madras, *see* notifications quoted on pp. 106 and 107 of the Madras List of Local Rules and Orders, Vol. I, Ed. 1898.

³ For instance of such a notification, *see* Burma Gazette, 1896, Pt. I, p. 651.

(Part II.—Of the Registration-establishment. Secs. 8-13.)

8. The Local Government may also appoint officers to be called Inspectors of Registration-offices,¹ and may from time to time prescribe the duties of such officers. Every such Inspector shall be subordinate to the Inspector General.

Inspectors of
Registration-
offices.

9. Every Military cantonment where there is a Cantonment Magistrate may (if the Local Government so directs) be, for the purposes of this Act, a sub-district or a district, and such Magistrate shall be the Sub-Registrar or the Registrar of such sub-district or district, as the case may be * * *²

Military
cantonments
may be de-
clared sub-
districts or
districts.

10. Whenever any Registrar, other than the Registrar of a district including a presidency-town, is absent otherwise than on duty in his district, or when his office is temporarily vacant,

Absence of
Registrar
from his
district or
vacancy in
his office.

any person whom the Inspector General appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate,

shall be the Registrar during such absence or until the Local Government fills up the vacancy.

Whenever the Registrar of a district including a presidency-town is absent otherwise than on duty in his district, or when his office is temporarily vacant, any person whom the Inspector General appoints in this behalf shall be the Registrar during such absence, or until the Local Government fills up the vacancy.

11. Whenever any Registrar is absent from his office on duty in his district, he may appoint any Sub-Registrar or other person in his district to perform, during such absence, all the duties of a Registrar, except those mentioned in sections 68 and 72.

Absence of
Registrar on
duty in his
district.

12. Whenever any Sub-Registrar is absent, or when his office is temporarily vacant, any person whom the Registrar of the district appoints in this behalf shall be Sub-Registrar during such absence, or until the Local Government fills up the vacancy.

Absence of
Sub-Registrar
or vacancy in
his office.

13. All appointments made under section 10, section 11 or section 12 shall be reported to the Local Government by the Inspector General. Such report shall be either special or general, as the Local Government directs.

Appointments
under section
10, 11 or 12
to be reported
to Govern-
ment.

The Local Government may suspend, remove or dismiss any person appointed under the provisions of this Act, and appoint another person in his stead.

Suspension,
removal and
dismissal of
officers.

¹ For notifications appointing such officers in Burma, see Burma Gazette, 1887 and 1893, Pt. I, pp. 40 and 54, respectively.

For rules and instructions relating to the appointment and duties of such officers in the North-Western Provinces, see North-Western Provinces and Oudh Gazette, 1897 and 1898, Pt. I, pp. 35 and 833, respectively.

² The portion repealed by the Cantonments Act, 1889 (XIII of 1893), is omitted. That portion ran as follows:—"Whenever the Governor General in Council declares any military cantonment beyond the limits of British India to be a sub-district or a district for the purposes of this Act, he shall also declare, in the case of a sub-district, what authorities shall be Registrar and Inspector General, and, in the case of a district, what authority shall be Inspector General, with reference to the cantonment and the Sub-Registrar or Registrar thereof."

(Part II.—Of the Registration-establishment. Secs. 14-16. Part III.—
Of Registrable Documents. Sec. 17.)

Remuneration
and establish-
ments of
Registering
officers.

14. Subject to the approval of the Governor General in Council, the Local Government may assign such salaries as such Government from time to time deems proper to the registering officers appointed under this Act, or provide for their remuneration by fees, or partly by fees and partly by salaries.

The Local Government] may allow proper establishments for the several offices under this Act.

Seals of re-
gistering
officers.

15. The several Registrars and Sub-Registrars shall use a seal bearing the following inscription in English and in such other language as the Local Government directs :—“ The seal of the Registrar (*or* of the Sub-Registrar) of . ”

Register
books.

16. The Local Government shall provide for the office of every registering officer the books necessary for the purposes of this Act.

Forms.

The books so provided shall contain the forms from time to time prescribed by the Inspector General, with the sanction of the Local Government, and the pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

Fire-proof
boxes.

The Local Government shall supply the office of every Registrar with a fire-proof box, and shall in each district make suitable provision for the safe custody of the records connected with the registration of documents in such district.

PART III.

OF REGISTRABLE DOCUMENTS.

Documents
of which
registration
is compul-
sory.

17. The documents next hereinafter mentioned shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864,¹ or Act No. XX of 1866,² or Act No. VIII of 1871,³ or this Act, came or comes into force (that is to say),—

- (a) instruments of gift of immoveable property :
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property :

¹ Act XVI of 1864 was repealed by the Indian Registration Act, 1866 (XX of 1866).

² Act XX of 1866 was repealed by the Indian Registration Act, 1871 (VIII of 1871).

³ Act VIII of 1871 was repealed by s. 2 of this Act.

(Part III.—Of Registrable Documents. Sec. 17.)

- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest ; and
- (d) leases of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent :

Provided that the Local Government may, by order published in the official Gazette, exempt from the operation of the former part of this section any leases¹ executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

Nothing in clauses (b) and (c) of this section applies to—

- (e) any composition-deed ;
- (f) any instrument relating to shares in a Joint Stock Company, notwithstanding that the assets of such Company consist in whole or in part of immoveable property, or
- [²(ff) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immoveable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immoveable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures, or]
- (g) any endorsement upon or transfer of any debenture issued by any such Company,
- (h) any document not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immoveable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest ;
- (i) decrees and orders of Courts and awards ;
- (j) grants of immoveable property by Government ;

Exception of—
composition-deeds ;
and of transfers of share and debentures in Land Companies ;

documents merely creating right to obtain other documents.

¹ In Lower Burma certain building leases in Prome have been exempted from the operation of the section, *see* Burma Gazette, 1892, Pt. I, p. 532.

In the Madras Presidency all leases the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed Rs. 50, *see* Madras List of Local Rules and Orders, Ed. 1898, Vol. I, p. 107.

In the North-Western Provinces certain agricultural leases, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 53.

² Cl. (ff) was inserted by the Indian Registration Act, 1886 (VII of 1886), s. 2, printed, Vol. V, General Acts.

(Part III.— Of Registrable Documents. Sec. 18.)

- (k) instruments of partition made by Revenue-officers ;
- (l) ¹[orders granting loans] and instruments of collateral security granted under the Land Improvement Act, 1871 ;²
- ³[(m) orders granting loans under the Agriculturists' Loans Act, 1884,⁴ and instruments for securing the repayment of loans made under that Act ;]
- ⁵[(n) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage :]
- ⁶[(o) a certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-officer.]

XXVI of
1871.Authorities
to adopt.

Authorities to adopt a son, executed after the first day of January, 1872, and not conferred by a will, shall also be registered.⁷

Documents of
which registra-
tion is
optional.

18. Any of the documents next hereinafter mentioned may be registered under this Act (that is to say),—

- (a) instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immoveable property :
- (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest :
- (c) leases of immoveable property for any term not exceeding one year and leases exempted under section 17 :
- (d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in moveable property :

¹ The words " orders granting loans " were substituted for the word " certificates " by the Land Improvement Loans Act, 1883 (XIX of 1883), s. 12, printed, General Acts, Vol. IV.

² See now the Land Improvement Loans Act, 1883 (XIX of 1883), printed, General Acts, Vol. IV.

³ Cl. (m) was added by the Indian Registration Act, 1886 (VII of 1886), s. 3 (1), printed, General Acts, Vol. V.

⁴ Printed, General Acts, Vol. IV.

⁵ Cl. (n) was added by the Indian Registration Act, 1886 (VII of 1886), s. 4, printed, General Acts, Vol. V.

⁶ Cl. (o) was added by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 65 (1), and is to be construed as if it had been inserted by the Registration and Limitation Acts Amendment Act, 1879 (XII of 1879), see Act VII of 1888, s. 65 (3), printed, General Acts, Vol. V.

⁷ Also memoranda appointing new trustees under the Religious Societies Act, 1880 (I of 1880), see Act I of 1880, s. 3, printed, *infra*, p. 297.

(Part III.—Of Registrable Documents. Secs. 19-22. Part IV.—Of the Time of Presentation. Sec. 23.)

(e) wills :

(f) all other documents not required by section 17 to be registered.

19. If any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy.

Documents in language not understood by registering officer.

20. The registering officer may in his discretion refuse to accept for registration any document in which any interlineation, blank, erasure or alteration appears, unless the persons executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration. If he register such document, he shall, at the time of registering the same, make a note in the register of such interlineation, blank, erasure or alteration.

Documents containing interlineations, blanks, erasures or alterations.

21. (a) No non-testamentary document relating to immoveable property shall be accepted for registration unless it contains a description of such property sufficient to identify the same.

Description of parcels.

(b) Houses in towns shall be described as situate on the north or other side of the street or road (mentioning it) to which they front, and by their existing and former occupancies, and by their numbers if the houses in such street or road are numbered. Other houses and lands shall be described by their name, if any, and as being in the territorial division in which they are situate, and by their superficial contents, the roads and other properties on which they abut, and their existing occupancies, and also, whenever it is practicable, by reference to a Government map or survey.

(c) No non-testamentary document containing a map or plan of any property comprised therein shall be accepted for registration unless it be accompanied by a true copy of the map or plan, or, in case such property is situate in several districts, by such number of true copies of the map or plan as are equal to the number of such districts.

Documents containing maps or plans.

22. Failure to comply with the provisions contained in section 21, clause (b), shall not disentitle a document to be registered if the description of the property to which it relates is sufficient to identify such property.

Failure to comply with rules as to description of houses and land.

PART IV.

OF THE TIME OF PRESENTATION.

23. Subject to the provisions contained in sections 24, 25 and 26, no document other than a will shall be accepted for registration unless presented for

Time for presenting documents.

(Part IV.—Of the Time of Presentation. Secs. 24-27. Part V.—Of the Place of Registration. Sec. 28.)

that purpose to the proper officer within four months from the date of its execution,

or, in the case of a copy of a decree or order, within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final :

Provided that, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

Provision
where delay
in presenta-
tion is un-
avoidable.

24. If, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration-fee such document shall be accepted for registration.

Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Documents
executed out
of British
India.

25. When a document purporting to have been executed by all or any of the parties out of British India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the registering officer, if satisfied—

(a) that the instrument was so executed, and

(b) that it has been presented for registration within four months after its arrival in British India,

may, on payment of the proper registration-fee, accept such document for registration.

Provision
where office
is closed on
last day of
period for
presentation.

26. Whenever a registration-office is closed on the last day of any period provided in this Act for the presentation of any document, such last day shall, for the purposes of this Act, be deemed to be the day on which the office re-opens.

Wills may be
presented or
deposited at
any time.

27. A will may at any time be presented for registration or deposited in manner hereinafter provided.

PART V.

OF THE PLACE OF REGISTRATION.

Place for re-
gistering
documents

28. Save as in this Part otherwise provided, every document mentioned in section 17, clauses (a), (b), (c) and (d), and section 18, clauses (a), (b) and (c),

(Part V.—Of the Place of Registration. Secs. 29-31. Part VI.—Of Presenting Documents for Registration. Sec. 32.)

shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate. relating to land.

29. Every document other than a document referred to in section 28, and copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the Local Government at which all the persons executing and claiming under the document desire the same to be registered. Place for registering other documents.

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immoveable property, in the office of any other Sub-Registrar under the Local Government at which all the persons claiming under the decree or order desire the copy to be registered.

30. (a) Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him. Registration by Registrar.

(b) The Registrar of a district including a presidency-town and the Registrar of the Lahore District may receive and register any document referred to in section 28 without regard to the situation in any part of British India of the property to which the document relates. Registration by Registrar at presidency-town and Lahore.

31. In ordinary cases the registration or deposit of documents under this Act shall be made only at the office of the officer authorized to accept the same for registration or deposit. Registration or acceptance for deposit at private residence.

But such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

PART VI.

OF PRESENTING DOCUMENTS FOR REGISTRATION.

32. Except in the cases mentioned in section 31 and section 89, every document to be registered under this Act, whether such registration be compulsory or optional, shall be presented at the proper registration-office, Persons to present documents for registration.

by some person executing or claiming under the same, or, in the case of a copy of a decree or order, claiming under the decree or order,

or by the representative or assign of such person,

or by the agent of such person, representative or assign, duly authorized by power-of-attorney executed and authenticated in manner hereinafter mentioned.

(Part VI.—Of Presenting Documents for Registration. Secs. 33-34.)

Powers-of-attorney recognizable for purposes of section 32.

33. For the purposes of section 32, the powers-of-attorney next hereinafter mentioned shall alone be recognized (that is to say)—

- (a) if the principal at the time of executing the power-of-attorney resides in any part of British India in which this Act is for the time being in force, a power-of-attorney executed before and authenticated by the Registrar or Sub-Registrar within whose district or sub-district the principal resides :
- (b) if the principal at the time aforesaid resides in any other part of British India, a power-of-attorney executed before and authenticated by any Magistrate :
- (c) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a Notary Public,¹ or any Court, Judge, Magistrate, British Consul or Vice-Consul, or representative of Her Majesty or of the Government of India :

Provido as to person in-firm, or in jail, or exempt from appearing in Court.

Provided that the following persons shall not be required to attend at any registration-office or Court for the purpose of executing any such power-of-attorney as is mentioned in clauses (a) and (b) of this section :—

persons who by reason of bodily infirmity are unable without risk or serious inconvenience so to attend ;

persons who are in jail under civil or criminal process ; and

persons exempt by law ² from personal appearance in Court.

In every such case the Registrar or Sub-Registrar or Magistrate (as the case may be), if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be the principal, may attest the same, without requiring his personal attendance at the office or Court aforesaid.

To obtain evidence as to the voluntary nature of the execution, the Registrar or Sub-Registrar or Magistrate may either himself go to the house of the person purporting to be the principal, or to the jail in which he is confined, and examine him, or issue a commission for his examination.

Any power-of-attorney mentioned in this section may be proved by the production of it without further proof when it purports on the face of it to have been executed before and authenticated by the person or Court hereinbefore mentioned in that behalf.

Enquiry before registration by registering officer.

34. Subject to the provisions contained in this Part and in sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under sections 23, 24, 25 and 26 :

¹ For power to appoint Notaries Public, see the Negotiable Instruments Act, 1881 (XXVI of 1881), s. 138, printed, *infra*, p. 426.

² See ss. 640 and 641 of the Code of Civil Procedure (Act XIV of 1852), printed, General Acts, Vol. IV.

(Part VI.—Of Presenting Documents for Registration. Sec. 35.)

Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of the proper registration-fee, in addition to the fine, if any, payable under section 24, the document may be registered.

Such appearances may be simultaneous or at different times.

The registering officer shall thereupon—

- (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed,
- (b) satisfy himself as to the indentify of the persons appearing before him and alleging that they have executed the document, and
- (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.

Any application for a direction under the proviso in this section may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

Nothing in this section applies to copies of decrees or orders.

35. If all the persons executing the document appear personally before the registering officer and are personally known to him, or if he be otherwise satisfied that they are the persons they represent themselves to be, and if they all admit the execution of the document ;

Procedure on
admission of
execution.

or, in the case of any person appearing by a representative, assign or agent, if such representative, assign or agent admits the execution ;

or, if the person executing the document is dead, and his representative or assign appears before the registering officer and admits the execution,

the registering officer shall register the document as directed in sections 58 to 61, inclusive.

The registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office.

If any of the persons by whom the document purports to be executed deny its execution, or

Procedure on
denial of exe-
cution, etc.

if any such person appears ¹[to the registering officer] to be a minor, an idiot, or a lunatic, or

if any person by whom the document purports to be executed is dead, and his representative or assign denies its execution,

¹ These words were inserted by the Registration and Limitation Acts Amendment Act, 1879 (XII of 1879), s. 104, printed, *infra*, p. 268.

(Part VII.—Of Enforcing the Appearance of Executants and Witnesses. Secs. 36-39.)

the registering officer shall refuse to register the document ¹[as to the person so denying, appearing or dead]: Provided that, where such officer is a Registrar, he shall follow the procedure prescribed in Part XII of this Act.

PART VII.

OF ENFORCING THE APPEARANCE OF EXECUTANTS AND WITNESSES.

Procedure where appearance of executant or witness is desired.

36. If any person presenting any document for registration, or claiming under any document which is capable of being so presented, desires the appearance of any person whose presence or testimony is necessary for the registration of such document, the registering officer may, in his discretion, call upon such officer or Court as the Local Government ²from time to time directs in this behalf to issue a summons requiring him to appear at the registration-office, either in person or by duly authorized agent, as in the summons may be mentioned, and at a time named therein.

Officer or Court to issue and cause service of summons.

37. The officer or Court, upon receipt of the peon's fee payable in such cases, shall issue the summons accordingly, and cause it to be served upon the person whose appearance is so required.

Persons exempt from appearance at registration-office.

38. A person who by reason of bodily infirmity is unable without risk or serious inconvenience to appear at the registration-office,

a person in jail under civil or criminal process,

and persons exempt by law from personal appearance in Court, and who would but for the provision next hereinafter contained be required to appear in person at the registration-office,

shall not be required so to appear.

In every such case, the registering officer shall either himself go to the house of such person, or to the jail in which he is confined, and examine him or issue a commission for his examination.

Law as to summonses, commissions and witnesses.

39. The law in force for the time being as to summonses, commissions and compelling the attendance of witnesses, and for their remuneration in suits before Civil Courts shall, save as aforesaid and *mutatis mutandis*, apply to any summons or commission issued, and any person summoned to appear under the provisions of this Act.

¹ These words were inserted by the Registration and Limitation Acts Amendment Act, 1879 (XII of 1879), s. 101, printed, *infra*, p. 263.

² For notification issued under this section for Lower Burma, see *Burma Gazette*, 1880, Pt. I, p. 200.

(Part VIII.—Of Presenting Wills and Authorities to Adopt. Secs. 40-41.
Part IX.—Of the Deposit of Wills. Secs. 42-44.)

PART VIII.

OF PRESENTING WILLS AND AUTHORITIES TO ADOPT.

40. The testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration, Persons entitled to present wills and authorities to adopt.

and the donor, or after his death the donee, of any authority to adopt, or the adoptive son, may present it to any Registrar or Sub-Registrar for registration.

41. A will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document. Registration of wills and authorities to adopt.

A will or authority to adopt presented for registration by any other person entitled to present it shall be registered if the registering officer is satisfied—

- (a) that the will or authority was executed by the testator or donor, as the case may be ;
- (b) that the testator or donor is dead ; and
- (c) that the person presenting the will or authority is, under section 40, entitled to present the same.

PART IX.

OF THE DEPOSIT OF WILLS.

42. Any testator may, either personally or by duly authorised agent, deposit with any Registrar this will in a sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document. Deposit of wills.

43. On receiving such cover, the Registrar, if satisfied that the person presenting the same for deposit is the testator or his agent, shall transcribe in his Register-book No. 5 the superscription aforesaid, and shall note in the same book and on the said cover the year, month, day and hour of such representation and receipt, and the names of any persons who may testify to the identity of the testator or his agent, and any legible inscription which may be on the seal of the cover. Procedure on deposit of wills.

The Registrar shall then place and retain the sealed cover in his fire-proof box.

44. If the testator who has deposited such cover wishes to withdraw it, he may apply, either personally or by duly authorised agent, to the Registrar who holds it in deposit, and such Registrar, if satisfied that the applicant is actually the testator or his agent, shall deliver the cover accordingly. Withdrawal of sealed cover deposited under section 42.

(Part IX.—Of the Deposit of Wills. Secs. 45-46. Part X.—Of the Effects of Registration and non-Registration. Secs. 47-50.)

Proceedings
on death of
depositor.

45. If, on the death of a testator who has deposited a sealed cover under section 42, application be made to the Registrar who holds it in deposit to open the same, and, if the Registrar is satisfied that the testator is dead, he shall, in the applicant's presence, open the cover, and, at the applicant's expense, cause the contents thereof to be copied into his Book No. 3.

Re-deposit.

When such copy has been made, the Registrar shall re-deposit the original will.

Saving of
the Indian
Succession
Act, 1865,
section 259.

46. Nothing hereinbefore contained shall affect the provisions of the Indian Succession Act,¹ section 259, or the power of any Court by order to X of 1865. compel the production of any will. But, whenever any such order is made, the Registrar shall, unless the will has been already copied under section 45, open the cover and cause the will to be copied into his Book No. 3 and make a note on such copy that the original has been removed into Court in pursuance of the order aforesaid.

PART X.

OF THE EFFECTS OF REGISTRATION AND NON-REGISTRATION.

Time from
which regis-
tered docu-
ment oper-
ates.

47. A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration.

Registered
documents
relating to
property
when to take
effect against
oral agree-
ments.

48. All non-testamentary documents duly registered under this Act, and relating to any property, whether moveable or immoveable, shall take effect against an oral agreement or declaration relating to such property, unless where the agreement or declaration has been accompanied or followed by delivery of possession.

Effect of non-
registration
of documents
required to
be registered.

49. No document required by section 17 to be registered—
shall affect any immoveable property comprised therein,
or confer any power to adopt,
or be received as evidence of any transaction affecting such property or conferring such power,

unless it has been registered in accordance with the provisions of this Act.

Registered
documents
relating to
land, of
which regis-
tration is
optional, to

50. Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order,

(Part XI.—Of the Duties and Powers of Registering Officers. Sec. 51.)

whether such unregistered document be of the same nature as the registered document or not* take effect against unregistered documents.

Nothing in the former part of this section applies to leases exempted under the proviso in section 17, or to the documents mentioned in clauses (e), (f), ¹ [(ff)], (g), (h), (i), (j), (k) ² [(l), (m), (n) and (o)] of the same section.

Explanation.—In cases where Act No. XVI of 1864 ³ or Act No. XX of 1866 ⁴ was in force in the place and at the time in and at which such unregistered document was executed, “unregistered” means not registered according to such Act, and, where the document is executed after the first day of July, 1871, not registered under Act No. VIII of 1871⁵ or this Act.

PART XI.

OF THE DUTIES AND POWERS OF REGISTERING OFFICERS.

(A) As to the Register-books and Indexes.

51. The following books shall be kept in the several offices hereinafter named (that is to say)— Register-books to be kept in the several offices.

In all registration-offices—

Book 1, “Register of non-testamentary documents relating to immoveable property ;”

Book 2, “Record of reasons for refusal to register ;”

Book 3, “Register of wills and authorities to adopt ;” and

Book 4, “Miscellaneous Register.”

In the offices of Registrars—

Book 5, “Register of deposits of wills.”

In Book 1 shall be entered or filed all documents or memoranda registered under sections 17, 18 and ⁵[89] which relate to immoveable property, and are not wills.

In Book 4 shall be entered all documents registered under clauses (d) and (f) of section 18 which do not relate to immoveable property.

Nothing in the former part of this section shall be deemed to require more than one set of books where the office of the Registrar has been amalgamated with the office of a Sub-Registrar.

¹ The letters (ff) were inserted by the Indian Registration Act, 1886 (VII of 1886), s. 5 ; and the letters and word “(l), (m), (n) and (o)” were substituted for the letter and word “and (l)” by the same section and by s. 65 (2) of the Civil Procedure Code Amendment Act, 1888 (VII of 1888). For both Acts, see General Acts, Vol. V.

² Act XVI of 1864 was repealed by the Indian Registration Act, 1866 (XX of 1866).

³ Act XX of 1866 was repealed by the Indian Registration Act, 1871 (VIII of 1871).

⁴ Act VIII of 1871 was repealed by s. 2 of this Act.

⁵ The figures “89” were substituted for the figures “87” by the Registration and Limitation Acts Amendment Act, 1879 (XII of 1879), s. 105, printed, *infra*, p. 263.

(Part XI.—Of the Duties and Powers of Registering Officers. Secs. 57-58.)

directs, a copy of all entries made by such Sub-Registrar, during the last of such intervals, in Indexes Nos. I, II and III.

Every Registrar receiving such copy shall file it in his office.

57. Subject to the previous payment of the fees payable in that behalf, the Books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same; and, subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies.

Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants (but not before) to any person applying for such copies.

Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative. The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer.

All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents.

(B) *As to the procedure on admitting to Registration.*

58. On every document admitted to registration, other than a copy of a decree or order, ¹[or a copy sent to a registering officer under section 89,] there shall be endorsed from time to time the following particulars (that is to say) :—

- (a) the signature and addition of every person admitting the execution of the document; and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;
- (b) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and
- (c) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document,

Indexes Nos. I, II and III to be sent by Sub-Registrar to Registrar. Such copy to be filed by Registrar. Registering officers to allow inspection of certain books and indexes and to give certified copies of entries.

Particulars to be endorsed on documents admitted to registration.

¹ These words and figures were substituted for the words and figures "or a copy of a certificate under the Land Improvement Act, 1871, sent by the Collector to be registered, or where the Land Improvement Loans Act, 1883, was at the time in force," for the words and figures "or a copy of an order under the Land Improvement Loans Act, 1883," by the Indian Registration Act, 1886 (VII of 1886), s. 3 (2), printed, General Acts, Vol. V.

(Part XI.—Of the Duties and Powers of Registering Officers. Secs. 59-63.)

and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

If any person admitting the execution of a document refuses to endorse the same, the registering officer shall nevertheless register it, but shall at the same time endorse a note of such refusal.

Such endorsements to be dated and signed by registering officer.

Certificate showing that document has been registered, and number and page of book in which it has been copied.

59. The registering officer shall affix the date and his signature to all endorsements made under sections 52 and 58, relating to the same document and made in his presence on the same day.

60. After such of the provisions of sections 34, 35, 58 and 59 as apply to any document presented for registration have been complied with, the registering officer shall endorse thereon a certificate containing the word "registered," together with the number and page of the book in which the document has been copied.

Such certificate shall be signed, sealed and dated by the registering officer, and shall then be admissible for the purpose of proving that the document has been duly registered in manner provided by this Act, and that the facts mentioned in the endorsements referred to in section 59 have occurred as therein mentioned.

Endorsements and certificate to be copied.

61. The endorsements and certificate referred to and mentioned in sections 59 and 60 shall thereupon be copied into the margin of the Register-book, and the copy of the map or plan (if any) mentioned in section 21 shall be filed in Book No. 1.

Document to be returned.

The registration of the document shall thereupon be deemed complete, and the document shall then be returned to the person who presented the same for registration, or to such other person (if any) as he has nominated in writing in that behalf on the receipt mentioned in section 52.

Procedure on presenting document in language unknown to registering officer.

62. When a document is presented for registration under section 19, the translation shall be transcribed in the register of documents of the nature of the original, and, together with the copy referred to in section 19, shall be filed in the registration-office.

The endorsements and certificate respectively mentioned in sections 59 and 60 shall be made on the original, and, for the purpose of making the copies and memoranda required by sections 57, 64, 65 and 66, the translation shall be treated as if it were the original.

Power to administer oaths.
Record of substance of statements.

63. Every registering officer may at his discretion administer an oath to any person examined by him under the provisions of this Act.

He may also at his discretion record a note of the substance of the statement made by each such person, and such statement shall be read over, or (if

(Part XI.—Of the Duties and Powers of Registering Officers. Secs. 64-66.)

made in a language with which such person is not acquainted) interpreted to him in a language with which he is acquainted, and, if he admits the correctness of such note, it shall be signed by the registering officer.

Every such note so signed shall be admissible for the purpose of proving that the statements therein recorded were made by the persons and under the circumstances therein stated.

(C) *Special Duties of Sub-Registrar.*

64. Every Sub-Registrar on registering a non-testamentary document relating to immoveable property not wholly situate in his own sub-district shall make a memorandum thereof and of the endorsement and certificate (if any) thereon, and send the same to every other Sub-Registrar subordinate to the same Registrar as himself in whose sub-district any part of such property is situate, and such Sub-Registrar shall file the memorandum in his Book No. 1.

Procedure on registration of document relating to land situate in several sub-districts.

65. Every Sub-Registrar on registering a non-testamentary document relating to immoveable property situate in more districts than one shall also forward a copy thereof and of the endorsement and certificate (if any) thereon, together with a copy of the map or plan (if any) mentioned in section 21 to the Registrar of every district, in which any part of such property is situate other than the district in which his own sub-district is situate.

Procedure where document relates to land situate in several districts.

The Registrar on receiving the same shall file in his Book No. 1 the copy of the document and the copy of the map or plan (if any), and shall forward a memorandum of the document to each of the Sub-Registrars subordinate to him within whose sub-district any part of such property is situate: and every Sub-Registrar receiving such memorandum shall file it in his Book No. 1.

(D) *Special Duties of Registrar.*

66. On registering any non-testamentary document relating to immoveable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.

Procedure on registering documents relating to land.

He shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.

Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.

(Part XI.—Of the Duties and Powers of Registering Officers. Secs. 67-69.)

Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

Procedure on registration under section 30, clause (b).

67. On any document being registered under section 30, clause (b), a copy of such document and of the endorsements and certificate thereon shall be forwarded to every Registrar within whose district any part of the property to which the instrument relates is situate, and the Registrar receiving such copy shall follow the procedure prescribed for him in the first clause of section 66.

(E) Of the controlling Powers of Registrars and Inspectors General.

Registrar to superintend and control Sub-Registrars.

68. Every Sub-Registrar shall perform the duties of his office under the superintendence and control of the Registrar in whose district the office of such Sub-Registrar is situate.

Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Sub-Registrar subordinate to him, or in respect of the rectification of any error regarding the book or the office in which any document shall have been registered.

Inspector General to superintend registration-offices. His power to make rules.

69. The Inspector General shall exercise a general superintendence over all the registration-offices in the territories under the Local Government, and shall have power from time to time to make rules consistent with this Act¹—

providing for the safe custody of books, papers and documents, and also for the destruction of such books, papers and documents as need no longer be kept ;

declaring what languages shall be deemed to be commonly used in each district ;

declaring what territorial divisions shall be recognized under section 21 ;

regulating the amount of fines imposed under sections 24 and 34, respectively ;

regulating the exercise of the discretion reposed in the registering officer by section 63 ;

regulating the form in which registering officers are to make memoranda of documents ;

regulating the authentication by Registrars and Sub-Registrars of the books kept in their respective offices under section 51 ;

¹ For rules made under the powers conferred by this section in —

Bombay, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. xlix and 1 ;
Burma, see Burma Laws List, Ed. 1897, p. 74 ;

Madras, see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 107 to 109 ;
N.-W. P. and Oudh, see N.-W. P. and Oudh List of Local Rules and Orders, Ed. 1894, p. 53 ;

Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 20 ;
Assam, see Assam List of Local Rules and Orders, Ed. 1898, p. xxii.

(Part XI.—Of the Duties and Powers of Registering Officers. Sec. 70.

Part XII.—Of Refusal to Register. Secs. 71-72.)

declaring the particulars to be contained in Indexes Nos. I, II, III and IV, respectively ;

declaring the holidays that shall be observed in the registration-offices ;

and, generally, regulating the proceedings of the Registrars and Sub-Registrars.

The rules so made shall be submitted to the Local Government for approval, and, after they have been approved, they shall be published in the official Gazette and shall then have the same force as if they were inserted in this Act.

70. The Inspector General may also, in the exercise of his discretion, remit wholly or in part the difference between any fine levied under section 24 or section 34, and the amount of the proper registration-fee.

His power to remit fines.

PART XII.

OF REFUSAL TO REGISTER.

71. Every Sub-Registrar refusing to register a document,

except on the ground that the property to which it relates is not situate within his sub-district,

Reasons for refusal to register to be recorded.

shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document ; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

72. Except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar to whom such Sub-Registrar is subordinate, if presented to such Registrar within thirty days from the date of the order ; and the Registrar may reverse or alter such order :

Power to reverse or alter orders of Sub-Registrar refusing registration on ground other than denial of execution.

and, if the order of the Registrar directs the document to be registered and the document is duly presented for registration within thirty days after the making of such order, the Sub-Registrar shall obey the same, and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60 ; and such registration shall take effect as if the document had been registered when it was first duly presented for registration.

(Part XII.—Of Refusal to Register. Secs. 73-76.)

Application
where Sub-
Registrar
refuses to
register on
ground of
denial of
execution.

73. When a Sub-Registrar has refused to register a document on the ground that any person by whom it purports to be executed, or his representative or assign, denies its execution,

any person claiming under such document, or his representative, assign or agent authorized as aforesaid, may, within thirty days after the making of the order of refusal, apply to the Registrar to whom such Sub-Registrar is subordinate in order to establish his right to have the document registered.

Such application shall be in writing and shall be accompanied by a copy of the reason recorded under section 71, and the statements in the application shall be verified by the applicant in manner required by law for the verification of plaints.

Procedure of
Registrar on
such applica-
tion.

74. In such case, and also where such denial as aforesaid is made before a Registrar in respect of a document presented for registration to him, he shall, as soon as conveniently may be, enquire—

(a) whether the document has been executed ;

(b) whether the requirements of the law for the time being in force have been complied with on the part of the applicant or person presenting the document for registration, as the case may be, so as to entitle the document to registration.

Order to
register and
procedure
thereon.

75. If the Registrar finds that the document has been executed and that the said requirements have been complied with, he shall order the document to be registered.

And, if the document be duly presented for registration within thirty days after the making of such order, the registering officer shall obey the same and thereupon shall, so far as may be practicable, follow the procedure prescribed in sections 58, 59 and 60.

Such registration shall take effect as if the document had been registered when it was first duly presented for registration.

The Registrar may for the purpose of any enquiry under section 74, summon and enforce the attendance of witnesses, and compel them to give evidence as if he were a Civil Court, and he may also direct by whom the whole or any part of the costs of any such enquiry shall be paid, and such costs shall be recoverable as if they had been awarded in a suit under the Code of Civil¹ Procedure.

76. Every Registrar refusing—

(a) to register a document except on the ground that property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

Refusal by
Registrar.

¹ See now Act XIV of 1882, printed, General Acts, Vol. IV.

(Part XII.—Of Refusal to Register. Sec. 77. Part XIII.—Of the Fees for Registration, Searches and Copies. Sec. 78.)

(b) to direct the registration of a document under section 72 or section 75, shall make an order of refusal and record the reasons for such order in his Book No. 2, and, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

No appeal lies from any order under this section or section 72.

77. Where the Registrar refuses to order the document to be registered under section 72 or section 76, any person claiming under such document, or his representative, assign or agent, may, within thirty days after the making of the order of refusal, institute in the Civil Court, within the local limits of whose original jurisdiction is situate the office in which the document is sought to be registered, a suit for a decree directing the document to be registered in such office if it be duly presented for registration within thirty days after the passing of such decree; and the provisions contained in the second and third paragraphs of section 75 shall, *mutatis mutandis*, apply to all documents so presented, and, notwithstanding anything contained in this Act, the document shall be receivable in evidence in such suit.

Suit in case of refusal.

PART XIII.

OF THE FEES FOR REGISTRATION, SEARCHES AND COPIES.

78. Subject to the approval of the Governor General in Council, the Local Government shall prepare a table of fees¹ payable—

Fees to be fixed by Local Government.

for the registration of documents :

for searching the registers :

for making or granting copies of reasons, entries or documents, before, on or after registration :

and of extra or additional fees payable—

for every registration under section 30 :

for the issue of commissions :

¹ For instance of such table, prepared in—

Bombay	see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 1;
Burma	see Burma Laws List, Ed. 1897, p. 74 ;
Madras	see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 109 ;
North-Western Provinces and Oudh.	see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 53 ;
Central Provinces	see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 22 ;
Assam	see Assam List of Local Rules and Orders, Ed. 1893, p. xxiii.

(Part XIII.—Of the Fees for Registration, Searches and Copies. Secs. 79-80.

Part XIV.—Of Penalties. Secs. 81-82.)

for filing translations :

for attending at private residences :

for the safe custody and return of documents :

and for such other matters as appear to the Local Government necessary to effect the purposes of this Act.

Alteration of fees.

The Local Government may from time to time, subject to the like approval, alter such table.

Publication of fees.

79. A table of the fees so payable shall be published in the official Gazette, and a copy thereof in English and the vernacular language of the district shall be exposed to public view in every registration-office.

Fees payable on presentation.

80. All fees for the registration of documents under this Act shall be payable on the presentation of such documents.

PART XIV.

OF PENALTIES.

Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure.

¹ 81. Every registering officer appointed under this Act and every person employed in his office for the purposes of this Act, who, being charged with the endorsing, copying, translating or registering of any document presented or deposited under its provisions, endorses, copies, translates or registers such document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury, as defined in the Indian Penal Code,² to any person, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

XLV of 1860.

Penalty for certain other offences.

¹ 82. Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both :

Making false statements before registering officer.

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any officer acting in execution of this Act, in any proceeding or inquiry under this Act ;

Delivering false copy or translation.

(b) intentionally delivers to a registering officer, in any proceeding under section 19 or section 21, a false copy or translation of a document, or a false copy of a map or plan ;

False personation.

(c) falsely personates another, and in such assumed character presents any document, or makes any admission or statement, or causes any summons or commission to be issued, or does any other act, in any proceeding or enquiry under this Act ;

¹ As to Upper Burma, cf. the Upper Burma Registration Regulation, 1897 (II of 1897), s. 12.

² Printed, General Acts, Vol. I, p. 240.

(Part XIV.—Of Penalties. Secs. 83-84. Part XV.—Miscellaneous. Sec. 85.)

V of 1860.

(d) abets, within the meaning of the Indian Penal Code,¹ any thing made punishable by this Act.

Abetment of offences under this Act. Registering officer may commence prosecutions.

83. A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, the Branch Inspector General of Sindh, the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.

Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a ²[Magistrate of the second] class :

Provided that, in imposing penalties under this Act, no such Court or officer shall exceed the limits of jurisdiction prescribed by the law for the time being in force as to such Court or officer.

All fines imposed under this Act may be recovered ³[in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts].

V of 1860. 84. Every registering officer appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.¹

Registering officers to be deemed public servants.

Every person shall be legally bound to furnish information to such registering officer when required by him to do so. And, in section 228 of the same Code, the words "judicial proceeding" shall include any proceeding under this Act * * * * *

PART XV.

MISCELLANEOUS.

85. Documents (other than wills) remaining unclaimed in any registration-office for a period exceeding two years may be destroyed.

Destruction of unclaimed documents.

¹ Printed, General Acts, Vol. I, p. 240.

² These words were substituted for the words "Subordinate Magistrate of the first" by the Registration and Limitation Acts Amendment Act, 1879 (XII of 1879), s. 106, printed, *infra*, p. 263.

³ These words were substituted for the words "if for offences committed outside the limits of the presidency-towns, in the manner prescribed by the Code of Criminal Procedure, and, if for offences committed within those limits, in the manner prescribed by any Act regulating the police of such towns for the time being in force" by the Repealing and Amending Act, 1891 (XII of 1891).

Cf. the General Clauses Act, 1897 (X of 1897), s. 25.

⁴ Portion repealed by the Repealing and Amending Act, 1891 (XII of 1891) is omitted. When the Local Government so directs, a Registrar or Sub-Registrar is to be deemed to be a Civil Court within the meaning of the Code of Criminal Procedure, 1898 (Act V of 1898), ss. 480 and 482. The portion omitted reads "A Registrar shall, but a Sub-Registrar shall not, as such, be deemed a Court within the meaning of ss. 435 and 436 of the Code of Criminal Procedure."

Registering officer not liable for thing *bond fide* done or refused in his official capacity. Nothing so done invalidated by defect in appointment or procedure. Registration of documents executed by Government officers or certain public functionaries.

86. No registering officer shall be liable to any suit, claim or demand by reason of anything in good faith done or refused in his official capacity.

87. Nothing done in good faith pursuant to this Act, or any Act hereby repealed, by any registering officer, shall be deemed invalid merely by reason of any defect in his appointment or procedure.

88. Notwithstanding anything herein contained, it shall not be necessary for any officer of Government, or for the Administrator General of Bengal, Madras or Bombay, or for any Official Trustee, or Official Assignee, or for the Sheriff, Receiver or Registrar of a High Court, to appear in person or by agent at any registration-office in any proceeding connected with the registration of any instrument executed by him in his official capacity, or to sign as provided in section 58.

But, when any instrument is so executed, the registering officer to whom such instrument is presented for registration may, if he think fit, refer to any Secretary to Government or to such officer of Government, Administrator General, Official Trustee, Official Assignee, Sheriff, Receiver or Registrar, as the case may be, for information respecting the same, and, on being satisfied of the execution thereof, shall register the instrument.

89. Every officer granting ¹[a loan] under the Land Improvement Act, 1871,² shall send a copy of ¹[his order] to the registering officer within the local limits of whose jurisdiction the whole or any part of the land to be improved, or of the land to be granted as collateral security, is situate, and such registering officer shall file ³[the copy] in his Book No. 1.

XXVI of
1871.

⁴[Every Court granting a certificate under section 316 of the Code of Civil Procedure ⁵ shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1.]

¹ The words "a loan" and "his order" were substituted for the words "a certificate" and "such certificate" respectively by the Land Improvement Loans Act, 1883, (XIX of 1883), s. 12, printed, General Acts, Vol. IV.

² See now the Land Improvements Loans Act, 1883 (XIX of 1883), see s. 2 of that Act.

³ These words were substituted for the words "the certificate" by the Registration and Limitation Acts Amendment Act, 1879 (XII of 1879), s. 107, printed, *infra*, p. 263.

⁴ This paragraph was added by the Registration and Limitation Acts Amendment Act, 1879 (XII of 1879), s. 107, printed, *infra*, p. 263.

⁵ This reference to s. 316 of Act X of 1877 should now be read as applying to s. 316 of Act XIV of 1882—see s. 3 of the latter Act, printed, General Acts, Vol. IV.

Orders under
Land Im-
provement
Loans Act,
1883.

of 1884.

¹[Every officer granting a loan under the Agriculturists' Loans Act, 1884,² shall send a copy of any instrument whereby immoveable property is mortgaged for the purpose of securing the repayment of the loan, and, if any such property is mortgaged for the same purpose in the order granting the loan, a copy also of that order, to the registering officer within the local limits of whose jurisdiction the whole or any part of the property so mortgaged is situate, and such registering officer shall file the copy or copies, as the case may be, in his Book No. 1.]

³[Every Revenue-officer granting a certificate of sale to the purchaser of immoveable property sold by public auction shall send a copy of the certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the property comprised in the certificate is situate, and such officer shall file the copy in his Book No. 1.]

Exemptions from Act.

90. Nothing contained in this Act or in Act No. VIII of 1871⁴ or in any Act thereby repealed shall be deemed to require, or to have at any time required, the registration of any of the following documents or maps :—

Exemption of certain documents executed by or in favour of Government.

- (a) documents issued, received or attested by any officer engaged in making a settlement or revision of settlement of land-revenue, and which form part of the records of such settlement ;
- (b) documents and maps issued, received or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, and which form part of the record of such survey ;
- (c) documents which, under any law for the time being in force, ⁵[are filed] periodically in any Revenue-office by patwaris or other officers charged with the preparation of village-records ;
- (d) sanads, inam title-deeds and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land ;

⁶(e) notices given under section 74 or section 76 of the Bombay Land-

¹ This paragraph was added by the Indian Registration Act, 1886 (VII of 1886), s. 3 (3), printed, General Acts, Vol. V.

² Printed, General Acts, Vol. IV.

³ This paragraph was inserted by the Repealing and Amending Act, 1891 (XII of 1891).

⁴ Act VIII of 1871 was repealed by s. 2 of this Act.

⁵ These words were substituted for the words " or filed " by the Repealing and Amending Act, 1891 (XII of 1891).

⁶ Cl. (e) was inserted by the Indian Registration Act, 1886 (VII of 1886), s. 6 (1), printed, General Acts, Vol. V ; and the Act is to be construed as if cl. (e) had been inserted in s. 90 at the time the Act came into force—see *ibid.*, s. 6 (3).

(Part XV—Miscellaneous. Secs. 91-92.)

Presidency Magistrates. (Preamble.) [1877: Act IV.

revenue Code, 1879,¹ of relinquishment of occupancy by occupants or of alienated land by holders of such land. Bom. V of 1879.

But all such documents and maps shall, for the purposes of sections 48 and 49, be deemed to have been and to be registered in accordance with the provisions of this Act.

Inspection
and copies of
such docu-
ments.

91. Subject to such rules and the previous payment of such fees as the Local Government from time to time prescribes in this behalf,² all documents and maps mentioned in section 90, clauses (a), (b), ³[(c) and (e),] and all registers of the documents mentioned in clause (d), shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

Burmese
registration
rules con-
firmed.

92. All rules relating to registration heretofore enforced in British Burma⁴ shall be deemed to have had the force of law, and no suit or other proceeding shall be maintained against any officer or other person in respect of anything done under any of the said rules.

ACT No. IV OF 1877.⁵

[28th February, 1877.]

An Act to regulate the procedure and increase the jurisdiction of the Courts of Magistrates in the Presidency-towns.

Preamble.

WHEREAS it is expedient to consolidate and amend the law regulating the procedure of the Courts of Magistrates in the Presidency-towns and to increase the jurisdiction of such Courts; It is hereby enacted as follows:—

1 to 56. [*Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882).*]

¹ Printed, Bombay Code, Vol. II, Ed. 1896, p. 303.

² For rules made under the powers conferred by this section in—

Bombay see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 1;

Madras see Madras List of Local Rules and Orders, Ed. 1898, p. 108.

³ These letters, etc., were substituted for the word and letter “ and (e) ” by the Indian Registration Act, 1886 (VII of 1886), s. 6 (2), printed, General Acts, Vol. V; and Act III of 1877 is to be construed as if this amendment had been made at the time it came into force—see *ibid.*, s. 6 (3).

⁴ This reference to British Burma should now be read as referring to Lower Burma—see the Upper Burma Laws Act, 1886 (XX of 1886), s. 4, printed, Burma Code, Ed. 1889, p. 363.

⁵ Short title, “The Presidency Magistrates (Court-fees) Act, 1877.” See the Indian Short Titles Act, 1897 (XIV of 1897).

For the Statement of Objects and Reasons, see Gazette of India, 1874, Pt. V, p. 83; for the Report of the Select Committee, see *ibid.*, 1875, Pt. V, p. 39, and 1876, Pt. V, p. 37; for the discussions in Council, see *ibid.*, 1874, Supplement, p. 418; *ibid.*, 1876, Supplement, pp. 193 and 709; *ibid.*, 1877, Supplement, p. 497.

57. A fee of eight annas shall be paid for every summons or warrant issued by a Presidency Magistrate, except in the case of a summons to attend and give evidence or to produce documents, in which case there shall be paid a fee of four annas :

Fees for summonses and warrants.

Provided that such Magistrate may in any case remit any such fee, if he is satisfied that the complainant is unable to pay the same, and shall remit it when the complaint is made by a public servant in the execution of his duty.

Power to remit fees.

58 to end. [*Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882).*]

ACT No. XI OF 1877.¹

[31st May, 1877.]

An Act to facilitate the admission of Military Lunatics into Asylums:

WHEREAS it is expedient to facilitate the admission of European military lunatics into asylums, and to amend the law now in force with regard to the admission thereto of Native military lunatics ; It is hereby enacted as follows :—

Preamble.

1. This Act may be called the Military Lunatics Act, 1877.

Short title.

It extends to the whole of British India² and, so far as regards subjects of Her Majesty, to the dominions of Native Princes and States in India in alliance with Her Majesty ;

Local extent.

And it shall come into force on the passing thereof.

Commencement.

2. [*Repeal of Act XXI of 1872.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

3. Whenever any European officer, warrant-officer, non-commissioned officer, soldier or other person subject to the provisions of the ³[Army Act] has

Procedure in respect of European

¹ For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V, p. 123 ; for discussions in Council, see *ibid.*, Supplement, pp. 511, 806 and 1567.

² The Act has been declared, under the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts in the Chutia Nagpúr Division, namely :—
the Districts of Hazáribágh, Lohárdaga [including the present District of Palaman, separated in 1894] and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum—see Gazette of India, 1881, Pt. I, p. 504.

The Act has been declared in force in—

British Baluchistan—see the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3 ;

Upper Burma generally (except the Shan States)—see the Upper Burma Laws Act, 1886 (XX of 1886), s. 6.

³ These words were substituted for the words “ Act for punishing mutiny and desertion, and for the better payment of the Army and their quarters for the time being in force ” by the Repealing and Amending (Army) Act, 1894 (XIII of 1894).

officer or
soldier de-
clared
lunatic.

been declared a lunatic in accordance with the provisions of the ¹[Military Regulations in force for the time being], and has been ordered to be forwarded to any one of the Presidency-towns, and it appears to ²[the Principal Medical Officer of Her Majesty's Forces in India, the Surgeon General with the Government of India, the Surgeon General with the Government of Madras, the Surgeon General with the Government of Bombay, or the Principal Medical Officer of the Command to which the said lunatic belongs], that it is in expedient that he should be removed to England, or that he should be detained in military custody until he can be conveniently sent to England, ³[such Principal Medical Officer or Surgeon General] may, if he think fit, make an order under his hand for the reception of the said lunatic into the Lunatic Asylum at Bhowanipur, Madras or Bombay, or such other lunatic asylum as may be duly authorized ⁴ for the purpose by the Governor General in Council;

and the officer in charge of such asylum shall receive the lunatic in the asylum, and detain him therein until he is discharged therefrom, in accordance with the ⁵[military regulations] in force for the time being, or until ⁶[such Principal Medical Officer or Surgeon General] applies for his transfer to the military authorities in view to his removal to England.

Report in
case of Na-
tive officer or
soldier ap-
pearing to be
insane.

4. Whenever any Native officer, non-commissioned officer or soldier appears to be insane, the officer commanding the regiment or detachment to which he belongs shall report the case to the general officer commanding the * * * district or force in which such regiment or detachment is serving.

Examination
of Native by
committee.

5. Such general officer shall thereupon cause the said Native to be examined by a committee composed of at least two medical officers, or (if this be impracticable) by a regimental committee comprising the officer in command of the wing or squadron to which the Native belongs, and the medical officer in charge of the corps or detachment of which such wing or squadron forms part.

Procedure on
Native being
found by
committee to
be insane.

6. If the said committee or regimental committee (as the case may be) are satisfied that the Native is insane, the officer commanding the * * * district

¹ These words were substituted for the words "military regulations of the Presidency to which he belongs" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894).

² These words were substituted for the words "one of the Surgeons General, either of the British Forces or of the Indian Medical Service according to the Presidency and the service to which the said lunatic belongs" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894).

³ These words were substituted for the words "such Surgeon General" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894).

⁴ For order adding the Rangoon Lunatic Asylum to this list, see Notification No. 668, Gazette of India, 1895, Pt. I, p. 579.

⁵ These words were substituted for the words "local military regulations" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894).

⁶ These words were substituted for the words "the Surgeon General" by the Repealing and Amending (Army) Act, 1894 (XIII of 1894).

⁷ The words "division or" were repealed by the Repealing and Amending (Army) Act, 1894 (XIII of 1894).

or force may, if he thinks fit, make an order under his hand for the reception of the said Native into a Lunatic Asylum, and shall then send him thither, under military escort; and the officer in charge of such asylum shall receive the Native into the asylum and detain him therein until he is discharged therefrom in accordance with the ¹[military regulations] in force for the time being.

7. Whenever it appears to the officer in charge of a lunatic asylum that the discharge of a military lunatic, whether European or Native, is necessary either on account of his recovery, or for any other purpose, such person shall be brought before the visitors of the asylum, and on the visitors recording their opinion that the discharge should be made, the general officer commanding the *² district or force, or other officer authorized to order the admission of military lunatics into asylums, shall forthwith direct him to be discharged, and such discharge shall take place in accordance with the ¹[military regulations] in force for the time being.

Procedure for
discharge of
European or
Native mili-
tary lunatic.

8. The Paymaster of the military circle within which any such asylum is situate shall pay to the officer in charge of such asylum the expense of the lodging, maintenance, clothing and medicine of every lunatic, whether European or Native, received and detained under this Act.

Payment of
expenses of
lunatic.

9. [*Legalization of past receptions in asylums.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

THE INDIAN LIMITATION ACT, 1877.

CONTENTS.

PART I.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
Extent.
Commencement.
2. References to the Indian Limitation Act, 1871.
Saving of titles already acquired.
Saving of Contract Act, 1872, section 25.
3. Interpretation-clause.

¹ These words were substituted for the words "local military regulations" by Act XIII of 1894.

² The word "division" was repealed by the Repealing and Amending (Army) Act, 1894 (XIII of 1894).

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

SECTIONS.

4. Dismissal of suits, etc., instituted, etc., after period of limitation.
5. Proviso where Court is closed when period expires.
Proviso as to appeals and applications for review.
- 5A. Limitation for certain appeals or applications for review of judgment.
6. Special and local laws of limitation.
7. Legal disability.
Double and successive disabilities.
Disability of representative.
8. Disability of one joint-creditor.
9. Continuous running of time.
10. Suits against express trustees and their representatives.
11. Suits on foreign contracts.
Foreign limitation law.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

12. Exclusion of day on which right to sue accrues.
Exclusion in case of appeals and certain applications.
13. Exclusion of time of defendant's absence from British India.
14. Exclusion of time of proceeding *bonâ fide* in Court without jurisdiction.
Like exclusion in case of order under Code of Civil Procedure, section 20.
Like exclusion in case of application.
15. Exclusion of time during which commencement of suit is stayed by injunction or order.
16. Exclusion of time during which judgment-debtor is attempting to set aside execution-sale.
17. Effect of death before right to sue accrues.
18. Effect of fraud.
19. Effect of acknowledgment in writing.
20. Effect of payment of interest as such.
Effect of part-payment of principal.
Effect of receipt of produce of mortgaged land.
21. One of several joint contractors, etc., not chargeable by reason of acknowledgment or payment made by another of them.
22. Effect of substituting or adding new plaintiff or defendant.
Proviso where original plaintiff dies.
Proviso where original defendant dies.
23. Continuing breaches and wrongs.
24. Suit for compensation for act not actionable without special damage.
25. Computation of time mentioned in instruments.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

26. Acquisition of right to easements.
27. Exclusion in favour of reversioner of servient tenement.
28. Extinguishment of right to property.

(Part I.—Preliminary. Sec. 1.)

FIRST SCHEDULE.

[Repealed.]

SECOND SCHEDULE.

FIRST DIVISION.—SUITS.

SECOND DIVISION.—APPEALS.

THIRD DIVISION.—APPLICATIONS.

ACT No. XV OF 1877.¹

[19th July, 1877.]

An Act for the Limitation of Suits, and for other purposes.

WHEREAS it is expedient to amend the law relating to the limitation of Preamble.
suits, appeals and certain applications to Courts; and whereas it is also
expedient to provide rules for acquiring by possession the ownership of ease-
ments and other property; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called the Indian Limitation Act, 1877.

Short title.

It extends to the whole of British India;² but nothing contained in
sections 2 and 3 or in Parts II and III applies—

Extent.

V of 1869.

(a) to suits under the Indian Divorce Act,³ or(b) to suits under Madras Regulation VI of 1831,⁴

and it shall come into force on the first day of October, 1877.

Commence-
ment.

2. [Repeal of Acts.] Rep. by the Repealing and Amending Act, 1891
(XII of 1891).

¹ For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V, p. 73; for the Report of the Select Committee, see *ibid.*, Pt. V, p. 127; for discussions in Council, see *ibid.*, Supplement, pp. 236, 321, 1104 and 2066.

² This Act has been declared in force in Upper Burma generally (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6 [Burma Code, Ed. 1889, p. 364]; in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3 [Baluchistan Code, Ed. 1890, p. 69]; in the Santhál Parganas by the Santhál Parganas' Settlement Regulation (III of 1872), as amended by the Santhál Parganas' Laws Regulation, 1886 (III of 1886), s. 6 [Bengal Code, Vol. I, Ed. 1889, p. 606]; in the District of Hazárá by the Hazárá Settlement Rules Amendment Regulation, 1874 (II of 1874), s. 3 [Punjab Code, Ed. 1888, p. 379]; and in the Subdivision of Angul by the Angul District Regulation, 1894 (I of 1894).

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, to be in force in the following Scheduled Districts, namely:—the Districts of Hazáribágh, Lohárdaga [including the present District of Palaman, separated in 1894], and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum [see Gazette of India, 1881, Pt. I, p. 504].

³ For Act IV of 1869, see General Acts, Vol. II, p. 1.

⁴ Printed, Madras Code, Ed. 1888, p. 98.

(Part I.—Preliminary. Sec. 3.)

References
to the Indian
Limitation
Act, 1871.
Saving of
titles already
acquired.
Saving of
Contract Act
1872, s. 25.
Interpreta-
tion-clause.

* 1 All references to the Indian Limitation Act, 1871,² shall be read IX of 1871. as if made to this Act; and nothing herein or in that Act contained shall be deemed to affect any title acquired, or to revive any right to sue barred, under that Act or under any enactment thereby repealed; and nothing herein contained shall be deemed to affect the Indian Contract Act,³ section 25. * * * 4 IX of 1872.

3. In this Act, unless there be something repugnant in the subject or context,—

“plaintiff” includes also any person from or through whom a plaintiff derives his right to sue; “applicant” includes also any person from or through whom an applicant derives his right to apply; and “defendant” includes also any person from or through whom a defendant derives his liability to be sued:

⁵ “easement” includes also a right, not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another, or anything growing in, or attached to, or subsisting upon, the land of another:

“bill of exchange” includes also a hundi and a cheque:

“bond” includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be:

“promissory note” means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited or on demand, or at sight:

“trustee”⁶ does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied, or a wrong-doer in possession without title:

“suit” does not include an appeal or an application:

“registered” means duly registered in British India under the law⁷ for the registration of documents in force at the time and place of executing the document, or signing the decree or order, referred to in the context:

“foreign country” means any country other than British India;

¹ The word “but” was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

² Act IX of 1871 was repealed by the first para. of s. 2 of this Act.

³ Printed, General Acts, Vol. II, Ed. 1888, p. 299.

⁴ The third para. of s. 2, relating to suits for which the period prescribed by the Act was shorter than that prescribed by Act IX of 1871, was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

⁵ This definition of “easement” is repealed in Madras, the Central Provinces, Coorg, Bombay, the North-Western Provinces and Oudh—see the Easements Act, 1882 (V of 1882), s. 3, printed, Bombay Code, Ed. 1894, p. 234, and Act VIII of 1891, printed *ib.*, p. 267.

⁶ Cf. definition in p. 4 of the Negotiable Instruments Act, 1881 (XXVI of 1881), printed, *infra*, p. 399.

⁷ See the Indian Registration Act, 1877 (III of 1877), printed, *supra*, p. 41.

(Part II.—Limitation of Suits, Appeals and Applications. Secs. 4-5.)

and nothing shall be deemed to be done in “good faith” which is not done with due care and attention.

PART II.

LIMITATION OF SUITS, APPEALS AND APPLICATIONS.

4. Subject to the provisions contained in sections 5 to 25 (inclusive), every suit instituted, appeal presented, and application made, after the period of limitation prescribed therefor by the second schedule hereto annexed, shall be dismissed, although limitation has not been set up as a defence.

Dismissal of suits, etc., instituted, etc., after period of limitation.

Explanation.—A suit is instituted, in ordinary cases, when the plaint is presented to the proper officer, in the case of a pauper, when his application for leave to sue as a pauper is filed, and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator.

Illustrations.

(a) A suit is instituted after the prescribed period of limitation. Limitation is not set up as a defence and judgment is given for the plaintiff. The defendant appeals. The appellate Court must dismiss the suit.

(b) An appeal presented after the prescribed period is admitted and registered. The appeal shall, nevertheless, be dismissed.

¹ 5. If the period of limitation prescribed for any suit, appeal or application expires on a day when the Court is closed, the suit, appeal or application may be instituted, presented or made on the day that the Court re-opens :

Proviso where Court is closed when period expires. Proviso as to appeals and applications for review.

Any appeal or application for a review of judgment may be admitted after the period of limitation prescribed therefor, when the appellant or applicant satisfies the Court that he had sufficient cause for not presenting the appeal or making the application within such period.

² 5A. Whenever it is shown to the satisfaction of the Court that an appeal or an application for a review of judgment was presented after the expiration of the period of limitation prescribed for such appeal or application owing to the appellant or applicant having been misled by any order, or practice or judgment of the High Court of the presidency, province or district, such appeal or application, if otherwise in accordance with law, shall for all purposes

Limitation for certain appeals or applications for review of judgment.

¹ The provisions of s. 5 applicable to appeals apply to applications under ss. 365, 366, 368 and 371 of the Code of Civil Procedure (Act XIV of 1882). See s. 372A. Printed, General Acts, Vol. IV.

² S. 5A was added by the Indian Limitation Act and Civil Procedure Code Amendment Act, 1892 (VI of 1892), s. 1. Act VI of 1892 applies to every appeal and review of judgment heard after the passing thereof, notwithstanding that the judgment appealed from or under review may have been passed, or the petition of appeal or application for review presented, before the passing of the Act—see s. 5 of the Act.

(Part II.—Limitation of Suits, Appeals and Applications. Secs. 6-7.)

be deemed by all Courts to have been presented within the period of limitation prescribed therefor.

Special and
local laws of
limitation.

6. When by any special or local law now or hereafter in force in British India, a period of limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed.

Legal disability.

¹ 7. If a person entitled to institute a suit or make an application be, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period, after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the second schedule hereto annexed.

Double and
successive
disabilities.

When he is, at the time from which the period of limitation is to be reckoned, affected by two such disabilities, or when, before his disability has ceased, he is affected by another disability, he may institute the suit or make the application within the same period, after both disabilities have ceased, as would otherwise have been allowed from the time so prescribed.

When his disability continues up to his death, his legal representative may institute the suit or make the application within the same period after the death as would otherwise have been allowed from the time so prescribed.

Disability of
representatives.

When such representative is at the date of the death affected by any such disability, the rules contained in the first two paragraphs of this section shall apply.

Nothing in this section applies to suits to enforce rights of pre-emption, or shall be deemed to extend, for more than three years from the cessation of the disability or the death of the person affected thereby, the period within which any suit must be instituted or application made.

Illustrations.

(a) The right to sue for the hire of a boat accrues to A during his minority. He attains majority four years after such accruer. He may institute his suit at any time within three years from the date of his attaining majority.

(b) A, to whom a right to sue for a legacy has accrued during his minority, attains majority eleven years after such accruer. A has, under the ordinary law, only one year remaining within which to sue. But under this section an extension of two years will be allowed him, making in all a period of three years from the date of his attaining majority, within which he may bring his suit.

¹ Ss. 7, 8 and 9 do not apply to certain suits and applications under the Bengal Tenancy Act, 1885 (VIII of 1885)—see s. 185 of that Act, in Bengal Code, Vol. I, Ed. 1889, p. 569.

(Part II.—Limitation of Suits, Appeals and Applications. Secs. 8-11.)

(c) A right to sue accrues to Z during his minority. After the accruer, but while Z is still a minor, he becomes insane. Time runs against Z from the date when his insanity and minority cease.

(d) A right to sue accrues to X during his minority. X dies before attaining majority, and is succeeded by Y, his minor son. Time runs against Y from the date of his attaining majority.

(e) A right to sue for an hereditary office accrues to A, who at the time is insane. Six years after the accruer A recovers his reason. A has six years, under the ordinary law, from the date when his insanity ceased within which to institute a suit. No extension of time will be given him under this section.

(f) A right to sue as landlord to recover possession from a tenant accrues to A, who is an idiot. A dies three years after the accruer, his idiocy continuing up to the date of his death. A's representative in interest has, under the ordinary law, nine years from the date of A's death within which to bring a suit. This section does not extend that time, except where the representative is himself under disability when the representation devolves upon him.

¹ 8. When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of such person, time will run against them all: but, where no such discharge can be given, time will not run as against any of them until one of them becomes capable of giving such discharge without the concurrence of the others.

Disability
of one joint-
creditor.

Illustrations.

(a) A incurs a debt to a firm of which B, C and D are partners. B is insane, and C is a minor. D can give a discharge of the debt without the concurrence of B and C. Time runs against B, C and D.

(b) A incurs a debt to a firm of which E, F and G are partners. E and F are insane, and G is a minor. Time will not run against any of them until either E or F becomes sane, or G attains majority.

¹ 9. When once time has begun to run, no subsequent disability or inability to sue stops it:

Continuous
running of
time.

Provided that, where letters of administration to the estate of a creditor have been granted to his debtor, the running of the time prescribed for a suit to recover the debt shall be suspended while the administration continues.

10. Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration) for the purpose of following in his or their hands such property shall be barred by any length of time.

Suits against
express trust-
ees and
their repre-
sentatives.

11. Suits instituted in British India on contracts entered into in a foreign country are subject to the rules prescribed by this Act.

Suits on
foreign con-
tracts.

¹ See foot-note on p. 78, *supra*.

(Part III.—Computation of Period of Limitation. Secs. 12-14.)

Foreign
limitation
law.

No foreign rule of limitation shall be a defence to a suit instituted in British India on a contract entered into in a foreign country, unless the rule has extinguished the contract and the parties were domiciled in such country during the period prescribed by such rule.

PART III.

COMPUTATION OF PERIOD OF LIMITATION.

Exclusion of
day on which
right to sue
accrues.

12. In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

Exclusion in
case of ap-
peals and
certain ap-
plications.

In computing the period of limitation prescribed for an appeal, an application for leave to appeal as a pauper, and an application for a review of judgment, the day on which the judgment complained of was pronounced, and the time requisite for obtaining a copy of the decree, sentence or order appealed against or sought to be reviewed, shall be excluded.

Where a decree is appealed against or sought to be reviewed, the time requisite for obtaining a copy of the judgment on which it is founded shall also be excluded.

In computing the period of limitation prescribed for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Exclusion of
time of de-
fendant's ab-
sence from
British India.
Exclusion of
time of pro-
ceeding *bona
fide* in Court
without juris-
diction.

13. In computing the period of limitation prescribed for any suit, the time during which the defendant has been absent from British India shall be excluded.

14. In computing the period of limitation prescribed for any suit, the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or in a Court of appeal, against the defendant, shall be excluded, where the proceeding is founded upon the same cause of action, and is prosecuted in good faith in a Court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Like exclu-
sion in case
of order
under Code
of Civil Pro-
cedure, sec-
tion 20.

In computing the period of limitation prescribed for a suit, proceedings in which have been stayed by order under the Code of Civil Procedure,¹ section 20, the interval between the institution of the suit and the date of so staying proceedings, and the time requisite for going from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded.

¹ See now Act XIV of 1882, printed, General Acts, Vol. IV.

(Part III.—Computation of Period of Limitation. Secs. 15-18.)

In computing the period of limitation prescribed for any application, the time during which the applicant has been making another application for the same relief shall be excluded, where the last-mentioned application is made in good faith to a Court which from defect of jurisdiction, or other cause of a like nature, is unable to grant it.

Like exclusion in case of application.

Explanation 1.—In excluding the time during which a former suit or application was pending or being made, the day on which that suit or application was instituted or made, and the day on which the proceedings therein ended, shall both be counted.

Explanation 2.—A plaintiff resisting an appeal presented on the ground of want of jurisdiction shall be deemed to be prosecuting a suit within the meaning of this section.

15. In computing the period of limitation prescribed for any suit, the institution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded.

Exclusion time during which commencement of suit is stayed by injunction or order.

16. In computing the period of limitation prescribed for a suit for possession by a purchaser at a sale in execution of a decree, the time during which the judgment-debtor has been prosecuting a proceeding to set aside the sale shall be excluded.

Exclusion time during which judgment-debtor is attempting to set aside execution-sale.

17. When a person who would, if he were living, have a right to institute a suit or make an application, dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting or making such suit or application.

Effect of death before right to sue accrues.

When a person against whom, if he were living, a right to institute a suit or make an application would have accrued dies before the right accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased against whom the plaintiff may institute or make such suit or application.

Nothing in the former part of this section applies to suits to enforce rights of pre-emption or to suits for the possession of immoveable property or of an hereditary office.

18. When any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded,

Effect of fraud.

(Part III.—Computation of Period of Limitation. Secs. 19-20.)

or where any document necessary to establish such right has been fraudulently concealed from him,

the time limited for instituting a suit or making an application—

(a) against the person guilty of the fraud or accessory thereto, or

(b) against any person claiming through him otherwise than in good faith and for a valuable consideration,

shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production.

Effect of
acknowledg-
ment in
writing.

19. If, before the expiration of the period prescribed for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the acknowledgment was so signed.

When the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed, but oral evidence of its contents shall not be received.

Explanation 1.—For the purposes of this section an acknowledgment may be sufficient, though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come, or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to a set-off, or is addressed to a person other than the person entitled to the property or right.

Explanation 2.—In this section “signed”¹ means signed either personally or by an agent² duly authorized in this behalf.

Effect of
payment of
interest as
such.

20. When interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

Effect of
part-payment
of principal.

or when part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf, a new period of limitation, according to the nature of the original liability, shall be computed from the time when the payment was made :

Provided that, in the case of part-payment of the principal of a debt, the fact of the payment appears in the hand-writing of the person making the same.

¹ Cf. references under “sign” and “signed” on p. 907 of Wigley’s Index to the Indian Statute Book, Vol. II, Ed. 1897.

² See the Mercantile Law Amendment Act, 1856 (19 & 20 Vict., c. 97), s. 13.

(Part III.—Computation of Period of Limitation. Secs. 21-25.)

Where mortgaged land is in the possession of the mortgagee, the receipt of the produce of such land shall be deemed to be a payment for the purpose of this section.

Effect of receipt of produce of mortgaged land.

21. Nothing in sections 19 and 20 renders one of several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgment signed, or of a payment made by, or by the agent of, any other or others of them.

One of several joint contractors, etc., not chargeable by reason of acknowledgment of payment made by another of them.

22. When, after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party :

Effect of substituting or adding new plaintiff or defendant. Proviso where original plaintiff dies.

Provided that, when a plaintiff dies, and the suit is continued by his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted by the deceased plaintiff :

Proviso where original defendant dies.

Provided also that, when a defendant dies and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Continuing breaches and wrongs.

24. In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Suit for compensation for act not actionable without special damage.

Illustrations.

(a) A owns the surface of a field. B owns the subsoil. B digs coal thereout without causing any immediate apparent injury to the surface, but at last the surface subsides. The period of limitation in the case of a suit by A against B runs from the time of the subsidence.

(b) A speaks and publishes of B slanderous words not actionable in themselves without special damage caused thereby. C in consequence refuses to employ B as his clerk. The period of limitation in the case of a suit by B against A for compensation for the slander does not commence till the refusal.

25. All instruments shall, for the purposes of this Act, be deemed to be made with reference to the Gregorian calendar.

Computation of time mentioned in instruments.

*(Part IV.—Acquisition of Ownership by Possession. Sec. 26.)**Illustrations.*

(a) A Hindu makes a promissory note bearing a Native date only, and payable four months after date. The period of limitation applicable to a suit on the note runs from the expiry of four months after date computed according to the Gregorian calendar.

(b) A Hindu makes a bond, bearing a Native date only, for the repayment of money within one year. The period of limitation applicable to a suit on the bond runs from the expiry of one year after date computed according to the Gregorian calendar.

PART IV.

ACQUISITION OF OWNERSHIP BY POSSESSION.

Acquisition
of right to
easements.

126. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, and as of right, without interruption, and for twenty years,

and where any way or watercourse, or the use of any water, or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption, and for twenty years,

the right to such access and use of light or air, way, watercourse, use of water, or other easement shall be absolute and indefeasible.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation.—Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.²

Illustrations.

(a) A suit is brought in 1881 for obstructing a right of way. The defendant admits the obstruction but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January, 1860, to 1st January, 1880. The plaintiff is entitled to judgment.

¹ S. 26 is repealed in Madras, the Central Provinces, Coorg, Bombay, the North-Western Provinces and Oudh, see the Indian Easements Act, 1882 (V of 1882), s. 3, printed, Bombay Code, Vol. I. Ed. 1894, p. 234, and Act VIII of 1891, printed, *ibid.*, p. 267.

² See the Prescription Act, 1832 (3 & 4 Wm. IV, c. 71), ss. 2, 3 and 4.

(Part IV.—Acquisition of Ownership by Possession. Secs. 27-28.)

(b) In a like suit also brought in 1881 the plaintiff merely proves that he enjoyed the right in manner aforesaid from 1858 to 1878. The suit shall be dismissed, as no exercise of the right by actual user has been proved to have taken place within two years next before the institution of the suit.

(c) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff, on one occasion during the twenty years, had asked his leave to enjoy the right. The suit shall be dismissed.

¹ 27. Provided that, when any land or water upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination to the said land or water.²

Exclusion in favour of reversioner of servient tenement.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C, a Hindu widow, had a life interest in the land, that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

28. At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.³

Extinguishment of right to property.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

[*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

¹ S. 27 is repealed in Madras, the Central Provinces, Coorg, Bombay, the North-Western Provinces and Oudh, by s. 3 of the Indian Easements Act, 1882 (V of 1882), printed, Bombay Code, Vol. I, Ed. 1894, p. 234, and Easements Extending Act, 1891 (VIII of 1891), printed, *ibid*, p. 267.

² See the Prescription Act, 1832 (2 & 3 Wm. IV, c. 71), s. 8.

³ See the Real Property Limitation Act, 1833 (3 & 4 Wm. IV, c. 27), s. 34.

(The Second Schedule.—First Division: Suits.)

THE SECOND SCHEDULE.

(See section 4.)

FIRST DIVISION: SUITS.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part I.—Thirty days.</i>	
1.—To contest an award of the Board of Revenue under Act No. XXIII of 1863 ¹ (to provide for the adjudication of claims to waste-lands).	Thirty days . .	When notice of the award is delivered to the plaintiff.
	<i>Part II.—Ninety days.</i>	
2.—For compensation for doing, or for omitting to do, an act alleged to be in pursuance of any enactment in force for the time being in British India.	Ninety days . .	When the act or omission takes place.
	<i>Part III.—Six months.</i>	
3.—Under the Specific Relief Act, 1877, section 9, ² to recover possession of immoveable property.	Six months . .	When the dispossession of 1877 occurs.
4.—Under Act No. IX of 1860 (to provide for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers), section 1. ³	Ditto . .	When the wages, hire or price of work claimed accrue or accrues due.
5.—Under the ⁴ Code of Civil Procedure, Chapter XXXIX (Of Summary Procedure on Negotiable Instruments).	Ditto . .	When the instrument sued upon becomes due and payable.
	<i>Part IV.—One year.</i>	
6.—Upon a Statute, Act, Regulation or Bye-law, for a penalty or forfeiture.	One year . .	When the penalty or forfeiture is incurred.
7.—For the wages of a house-hold servant, artisan or labourer not provided for by this schedule, No. 4.	Ditto . .	When the wages accrue due.

¹ Printed, General Acts, Vol. I, p. 414.

² Printed, *supra*, p. 1.

³ Printed, General Acts, Vol. I, p. 211.

⁴ See now the same Chapter of the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV.

(The Second Schedule.—First Division: Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION: SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV—One year—contd.</i>	
8.—For the price of food or drink sold by the keeper of a hotel, tavern or lodging-house.	One year . . .	When the food or drink is delivered.
9.—For the price of lodging . . .	Ditto . . .	When the price becomes payable.
10.—To enforce a right of pre-emption, whether the right is founded on law, or general usage, or on special contract.	Ditto . . .	When the purchaser takes, under the sale sought to be impeached, physical possession of the whole of the property sold, or, where the subject of the sale does not admit of physical possession, when the instrument of sale is registered.
11.—By a person against whom an order is passed under sections ¹ 280, 281, 282 or 335 of the Code of Civil Procedure to establish his right to, or to the present possession of, the property comprised in the order.	Ditto . . .	The date of the order.
12.—To set aside any of the following sales :— (a) sale in execution of a decree of a Civil Court; (b) sale in pursuance of a decree or order of a Collector or other officer of revenue; (c) sale for arrears of Government revenue or for any demand recoverable as such arrears; (d) sale of a patni taluq sold for current arrears of rent. <i>Explanation.</i> —In this clause “patni” includes any intermediate tenure saleable for current arrears of rent.	Ditto . . .	When the sale is confirmed, or would otherwise have become final and conclusive had no such suit been brought.
13.—To alter or set aside a decision or order of a Civil Court in any proceeding other than a suit.	Ditto . . .	The date of the final decision or order in the case by a Court competent to determine it finally.

¹ See now the same sections of the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV

(The Second Schedule.—First Division: Suits.)

THE SECOND SCHEDULE—*continued*.FIRST DIVISION: SUITS—*continued*.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.—One year—contd.</i>	
14.—To set aside any act or order of an officer of Government in his official capacity, not herein otherwise expressly provided for.	One year . .	The date of the act or order.
15.—Against Government to set aside any attachment, lease or transfer of immoveable property by the revenue authorities for arrears of Government revenue.	Ditto . .	When the attachment, lease or transfer is made.
16.—Against Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears.	Ditto . .	When the payment is made.
17.—Against Government for compensation for land acquired for public purposes. ¹	Ditto . .	The date of determining the amount of the compensation.
18.—Like suit for compensation when the acquisition is not completed.	Ditto . .	The date of the refusal to complete.
19.—For compensation for false imprisonment.	Ditto . .	When the imprisonment ends.
20.—By executors, administrators or representatives under Act No. XII of 1855 ² (<i>to enable executors, administrators or representatives to sue and be sued for certain wrongs</i>).	Ditto . .	The date of the death of the person wronged.
21.—By executors, administrators or representatives under Act No. XIII of 1855 ³ (<i>to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong</i>).	Ditto . .	The date of the death of the person killed.
22.—For compensation for any other injury to the person.	Ditto . .	When the injury is committed.

¹ See now the Land Acquisition Act, 1894 (I of 1894).² For the Legal Representatives Suit, Act, 1855 (XII of 1855), see General Acts, Vol. I, p. 97.³ For the Indian Fatal Accidents Act, 1855 (XIII of 1855), see General Acts, Vol. I, p. 98.

(The Second Schedule.—First Division : Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION : SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IV.—One year—concl.</i>	
23.—For compensation for a malicious prosecution.	One year . .	When the plaintiff is acquitted, or the prosecution is otherwise terminated.
24.—For compensation for libel . .	Ditto . .	When the libel is published.
25.—For compensation for slander . .	Ditto . .	When the words are spoken, or, if the words are not actionable in themselves, when the special damage complained of results.
26.—For compensation for loss of service occasioned by the seduction of the plaintiff's servant or daughter.	Ditto . .	When the loss occurs.
27.—For compensation for inducing a person to break a contract with the plaintiff.	Ditto . .	The date of the breach.
28.—For compensation for an illegal, irregular or excessive distress.	Ditto . .	The date of the distress.
29.—For compensation for wrongful seizure of moveable property under legal process.	Ditto . .	The date of the seizure.
	<i>Part V.—Two years.</i>	
30.—Against a carrier for compensation for losing or injuring goods.	Two years . .	When the loss or injury occurs.
31.—Against a carrier for compensation for delay in delivering goods.	Ditto . .	When the goods ought to be delivered.
32.—Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Ditto . .	When the perversion first becomes known to the person injured thereby.
33.—Under Act No. XII of 1855 ¹ (to enable executors, administrators or representatives to sue and to be sued for certain wrongs) against an executor, administrator or other representative.	Ditto . .	When the wrong complained of is done.

¹ For the Legal Representatives Suits Act, 1855 (XII of 1855), see General Acts, Vol. 1, p. 87.

(The Second Schedule.—First Division: Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION: SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part V.—Two years—concl'd.</i>	
34.—For the recovery of a wife . . .	Two years . . .	When possession is demanded and refused.
35.—For the restitution of conjugal rights.	Ditto . . .	When restitution is demanded and is refused by the husband or wife, being of full age and sound mind.
36.—For compensation for any malfeasance, misfeasance or non-feasance independent of contract and not herein specially provided for.	Ditto . . .	When the malfeasance, misfeasance or non-feasance takes place.
	<i>Part VI.—Three years.</i>	
37.—For compensation for obstructing a way or a watercourse.	Three years . . .	The date of the obstruction.
38.—For compensation for diverting a watercourse.	Ditto . . .	The date of the diversion.
39.—For compensation for trespass upon immoveable property.	Ditto . . .	The date of the trespass.
40.—For compensation for infringing copyright or any other exclusive privilege.	Ditto . . .	The date of the infringement.
41.—To restrain waste	Ditto . . .	When the waste begins.
42.—For compensation for injury caused by an injunction wrongfully obtained.	Ditto . . .	When the injunction ceases.
43.—Under the Indian Succession Act, 1865, ¹ section 320 or 321, ² [or under the Probate and Administration Act, 1881, sections 139 or 140,] to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets.	Ditto . . .	The date of the payment X of 1865. or distribution. V of 1881.

¹ Printed General Acts, Vol. I, p. 463.² These words and figures were inserted by s. 156 of the Probate and Administration Act, 1881 (V of 1881), printed, *infra*, p. 339.

(The Second Schedule.—First Division: Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION : SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
44.—By a ward who has attained majority, to set aside a sale by his guardian.	Three years . .	When the ward attains majority.
45.—To contest an award under any of the following Regulations of the Bengal Code :— VII of 1822, ¹ IX of 1825, ² and IX of 1833, ³	Ditto . .	The date of the final award or order in the case.
46.—By a party bound by such award to recover any property comprised therein.	Ditto . .	The date of the final award or order in the case.
47.—By any person bound by an order respecting the possession of property made under the 'Code of Criminal Procedure, Chapter XL, or the Bombay Mamlatdars' Courts Act, ⁵ or by any one claiming under such person, to recover the property comprised in such order.	Ditto . .	The date of the final order in the case.
48.—For specific moveable property lost, or acquired by theft, or dishonest misappropriation or conversion, or for compensation for wrongfully taking or detaining the same.	Ditto . .	When the person having the right to the possession of the property first learns in whose possession it is.
49.—For other specific moveable property, or for compensation for wrongfully taking or injuring or wrongfully detaining the same.	Ditto . .	When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful.
50.—For the hire of animals, vehicles, boats or household furniture.	Ditto . .	When the hire becomes payable.
51.—For the balance of money advanced in payment of goods to be delivered.	Ditto . .	When the goods ought to be delivered.

¹ The Settlement Regulation, 1822, printed, Bengal Code, Vol. I, Ed. 1889, p. 179.² The Settlement Regulation, 1825, printed, Bengal Code, Vol. I, Ed. 1889, p. 218.³ The Settlement Officers, etc., Regulation, 1833, printed, Bengal Code, Vol. I, Ed. 1889, p. 271; North-Western Provinces and Oudh Code, Ed. 1892, p. 70.⁴ See now Ch. II of the Code of Criminal Procedure, 1898 (Act V of 1898).⁵ Printed, Bombay Code, Vol. II, Ed. 1896, p. 237.

(The Second Schedule.—First Division: Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION: SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
52.—For the price of goods sold and delivered, where no fixed period of credit is agreed upon.	Three years . .	The date of the delivery of the goods.
53.—For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit.	Ditto . .	When the period of credit expires.
54.—For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given.	Ditto . .	When the period of the proposed bill clapses.
55.—For the price of trees or growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon.	Ditto . .	The date of the sale.
56.—For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment.	Ditto . .	When the work is done.
57.—For money payable for money lent .	Ditto . .	When the loan is made.
58.—Like suit when the lender has given a cheque for the money.	Ditto . .	When the cheque is paid.
59.—For money lent under an agreement that it shall be payable on demand.	Ditto . .	When the loan is made.
60.—For money deposited under an agreement that it shall be payable on demand.	Ditto . .	When the demand is made.
61.—For money payable to the plaintiff for money paid for the defendant.	Ditto . .	When the money is paid.
62.—For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.	Ditto . .	When the money is received.
63.—For money payable for interest upon money due from the defendant to the plaintiff.	Ditto . .	When the interest becomes due.

(The Second Schedule.—First Division: Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION: SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
64.—For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	Three years . .	When the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.
65.—For compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency.	Ditto . .	When the time specified arrives or the contingency happens.
66.—On a single bond, where a day is specified for payment.	Ditto . .	The day so specified.
67.—On a single bond, where no such day is specified.	Ditto . .	The date of executing the bond.
68.—On a bond subject to a condition .	Ditto . .	When the condition is broken.
69.—On a bill of exchange or promissory note payable at a fixed time after date.	Ditto . .	When the bill or note falls due.
70.—On a bill of exchange payable at sight, or after sight but not at a fixed time.	Ditto . .	When the bill is presented.
71.—On a bill of exchange accepted payable at a particular place.	Ditto . .	When the bill is presented at that place.
72.—On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Ditto . .	When the fixed time expires.
73.—On a bill of exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Ditto . .	The date of the bill or note.

(The Second Schedule.—First Division: Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION: SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
74.—On a promissory note or bond payable by instalments.	Three years . .	The expiration of the first term of payment as to the part then payable; and, for the other parts, the expiration of the respective terms of payment.
75.—On a promissory note or bond payable by instalments, which provides that, if default be made in payment of one instalment, the whole shall be due.	Ditto . .	When the first default is made, unless where the payee or obligee waives the benefit of the provision, and then when fresh default is made in respect of which there is no such waiver.
76.—On a promissory note given by the maker to a third person to be delivered to the payee after a certain event should happen.	Ditto . .	The date of the delivery to the payee.
77.—On a dishonoured foreign bill, where protest has been made and notice given.	Ditto . .	When the notice is given.
78.—By the payee against the drawer of a bill of exchange, which has been dishonoured by non-acceptance.	Ditto . .	The date of the refusal to accept.
79.—By the acceptor of an accommodation-bill against the drawer.	Ditto . .	When the acceptor pays the amount of the bill.
80.—Suit on a bill of exchange, promissory note or bond not herein expressly provided for.	Ditto . .	When the bill, note or bond becomes payable.
81.—By a surety against the principal debtor.	Ditto . .	When the surety pays the creditor.
82.—By a surety against a co-surety.	Ditto . .	When the surety pays anything in excess of his own share.
83.—Upon any other contract to indemnify.	Ditto . .	When the plaintiff is actually indemnified.

(The Second Schedule.—First Division: Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION: SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
84.—By an attorney or vakil for his costs of a suit or a particular business, there being no express agreement as to the time when such costs are to be paid.	Three years . .	The date of the termination of the suit or business, or (where the attorney or vakil properly discontinues the suit or business) the date of such discontinuance.
85.—For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties.	Ditto . .	The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.
86.—On a policy of insurance, when the sum assured is payable immediately after proof of the death or loss has been given to or received by the insurers.	Ditto . .	When proof of the death or loss is given or received to or by the insurers, whether by or from the plaintiff, or any other person.
87.—By the assured to recover premia paid under a policy voidable at the election of the insurers.	Ditto . .	When the insurers elect to avoid the policy.
88.—Against a factor for an account.	Ditto . .	When the account is, during the continuance of the agency, demanded and refused, or where no such demand is made, when the agency terminates.
89.—By a principal against his agent for moveable property received by the latter and not accounted for.	Ditto . .	Ditto.
90.—Other suits by principals against agents for neglect or misconduct.	Ditto . .	When the neglect or misconduct becomes known to the plaintiff.
91.—To cancel or set aside an instrument not otherwise provided for.	Ditto . .	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.

(The Second Schedule.—First Division: Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION: SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
92.—To declare the forgery of an instrument issued or registered.	Three years . .	When the issue or registration becomes known to the plaintiff.
93.—To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Ditto . .	The date of the attempt.
94.—For property which the plaintiff has conveyed while insane.	Ditto . .	When the plaintiff is restored to sanity, and has knowledge of the conveyance.
95.—To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Ditto . .	When the fraud becomes known to the party wronged.
96.—For relief on the ground of mistake.	Ditto . .	When the mistake becomes known to the plaintiff.
97.—For money paid upon an existing consideration which afterwards fails.	Ditto . .	The date of the failure.
98.—To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Ditto . .	The date of the trustee's death, or, if the loss has not then resulted, the date of the loss.
99.—For contribution by a party who has paid the whole amount due under a joint decree, or by a sharer in a joint estate who has paid the whole amount of revenue due from himself and his co-sharers.	Ditto . .	The date of the plain advance in excess of his own share.
100.—By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution.	Ditto . .	When the right to contribution accrues.
101.—For a seaman's wages	Ditto . .	The end of the voyage during which the wages are earned.
102.—For wages not otherwise expressly provided for by this schedule.	Ditto . .	When the wages accrue due.

(The Second Schedule.—First Division: Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION: SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VI.—Three years—contd.</i>	
103.—By a Muhammadan for exigible dower (<i>mu'ajjal</i>).	Three years . .	When the dower is demanded and refused, or (where during the continuance of the marriage, no such demand has been made) when the marriage is dissolved by death or divorce.
B104.—By a Muhammadan for deferred dower (<i>mu'wajjal</i>).	Ditto . .	When the marriage is dissolved by death or divorce.
105.—By a mortgagor after the mortgage has been satisfied, to recover surplus collections received by the mortgagee.	Ditto . .	When the mortgagor re-enters on the mortgaged property.
106.—For an account and a share of the profits of a dissolved partnership.	Ditto . .	The date of the dissolution.
107.—By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate.	Ditto . .	The date of the payment.
108.—By a lessor for the value of trees cut down by his lessee contrary to the terms of the lease.	Ditto . .	When the trees are cut down.
109.—For the profits of immoveable property belonging to the plaintiff which have been wrongfully received by the defendant.	Ditto . .	When the profits are received, or, where the plaintiff has been dispossessed by a decree afterwards set aside on appeal, when he recovers possession.
110.—For arrears of rent . . .	Ditto . .	When the arrears become due.
111.—By a vendor of immoveable property to enforce his lien for unpaid purchase-money.	Ditto . .	The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance.
112.—For a call by a company registered under any Statute or Act.	Ditto . .	When the call is payable.

(The Second Schedule.—First Division: Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION: SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VI.—Three years—conold.</i>		
113.—For specific performance of a contract.	Three years . .	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.
114.—For the rescission of a contract.	Ditto . .	When the facts entitling the plaintiff to have the contract rescinded first become known to him.
115.—For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for.	Ditto . .	When the contract is broken, or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs, or (where the breach is continuing) when it ceases.
<i>Part VII.—Six years.</i>		
116.—For compensation for the breach of a contract in writing registered.	Six years . .	When the period of limitation would begin to run against a suit brought on a similar contract not registered.
117.—Upon a foreign judgment as defined in the Code of Civil Procedure. ¹	Ditto . .	The date of the judgment. XIV of 1st 2.
118.—To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place.	Ditto . .	When the alleged adoption becomes known to the plaintiff.
119.—To obtain a declaration that an adoption is valid.	Ditto . .	When the rights of the adopted son, as such, are interfered with.
120.—Suit for which no period of limitation is provided elsewhere in this schedule.	Ditto . .	When the right to sue accrues.

¹ See now the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV.

(The Second schedule.—First Division: Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION : SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part VIII— Twelve years.</i>	
121.—To avoid incumbrances or under-tenures in an entire estate sold for arrears of Government revenue, or in a patni taluq or other saleable tenure sold for arrears of rent.	Twelve years.	When the sale becomes final and conclusive.
122.—Upon a judgment obtained in British India, or a recognisance.	Ditto . .	The date of the judgment or recognisance.
123.—For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate.	Ditto . .	When the legacy or share becomes payable or deliverable.
124.—For possession of an hereditary office.	Ditto . .	When the defendant takes possession of the office adversely to the plaintiff.
		<i>Explanation.</i> —An hereditary office is possessed when the profits thereof are usually received, or (if there are no profits) when the duties thereof are usually performed.
125C.—Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her remarriage.	Ditto . .	The date of the alienation.
126.—By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	Ditto . .	When the alienee takes possession of the property.
127.—By a person excluded from joint-family property to enforce a right to share therein.	Ditto . .	When the exclusion becomes known to the plaintiff.
128.—By a Hindu for arrears of maintenance.	Ditto . .	When the arrears are payable.

(The Second Schedule.—First Division : Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION : SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VIII.— Twelve years—contd.</i>		
129.—By a Hindu for a declaration of his right to maintenance.	Twelve years . .	When the right is denied.
130.—For the resumption or assessment of rent-free land.	Ditto . .	When the right to resume or assess the land first accrues.
131.—To establish a periodically recurring right.	Ditto . .	When the plaintiff is first refused the enjoyment of the right.
132.—To enforce payment of money charged upon immoveable property.	Ditto . .	When the money sued for becomes due.
<i>Explanation.</i> —The allowance and fees respectively called <i>malikana</i> and <i>haggs</i> shall, for the purpose of this clause, be deemed to be money charged upon immoveable property.		
133.—To recover moveable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depositary or pawnee for a valuable consideration.	Ditto . .	The date of the purchase.
134.—To recover possession of immoveable property conveyed or bequeathed in trust or mortgaged and afterwards purchased from the trustee or mortgagee for a valuable consideration.	Ditto . .	Ditto.
135.—Suit instituted in a Court not established by Royal Charter by a mortgagee for possession of immoveable property mortgaged.	Ditto . .	When the mortgagor's right to possession determines.
136.—By a purchaser at a private sale for possession of immoveable property sold, when the vendor was out of possession at the date of the sale.	Ditto . .	When the vendor is first entitled to possession.

(The Second Schedule.—First Division : Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION : SUITS—continued.

Description of suit.	Period of limitation.	Time from which period begins to run.
<i>Part VIII.—Twelve years—concl'd.</i>		
137.—Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was out of possession at the date of the sale.	Twelve years	When the judgment-debtor is first entitled to possession.
138.—By a purchaser of land at a sale in execution of a decree, for possession of the purchased land, when the judgment-debtor was in possession at the date of the sale.	Ditto	The date of the sale.
139.—By a landlord to recover possession from a tenant.	Ditto	When the tenancy is determined.
140.—By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immoveable property.	Ditto	When his estate falls into possession.
141.—Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.	Ditto	When the female dies.
142.—For possession of immoveable property, when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Ditto	The date of the dispossession or discontinuance.
143.—Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	Ditto	When the forfeiture is incurred or the condition is broken.
144.—For possession of immoveable property or any interest therein not hereby otherwise specially provided for.	Ditto	When the possession of the defendant becomes adverse to the plaintiff.
<i>Part IX.—Thirty years.</i>		
145.—Against a depositary or pawnee to recover moveable property deposited or pawned.	Thirty years	The date of the deposit or pawn.

(The Second Schedule.—First Division : Suits.)

THE SECOND SCHEDULE—continued.

FIRST DIVISION : SUITS—concluded.

Description of suit.	Period of limitation.	Time from which period begins to run.
	<i>Part IX.—Thirty years—concl'd.</i>	
146.—Before a Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.	Thirty years	When any part of the principal or interest was last paid on account of the mortgage-debt.
	<i>Part X.—Sixty years.</i>	
147.—By a mortgagee for foreclosure or sale.	Sixty years	When the money secured by the mortgage becomes due.
148.—Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.	Ditto	When the right to redeem or to recover possession accrues :
		Provided that all claims to redeem, arising under instruments of mortgage of immoveable property situate in British Burma, ¹ which have been executed before the first day of May, 1863, shall be governed by the rules of limitation in force in that province immediately before the same day.
149.—Any suit by or on behalf of the Secretary of State for India in Council.	Ditto	When the period of limitation would begin to run under this Act against a like suit by a private person.

¹ This reference to British Burma should now be read as referring to Lower Burma, see the Upper Burma Law Act, 1886 (XX of 1886), s. 4, printed, Burma Code, Ed. 1889, p. 383.

(The Second Schedule.—Second Division : Appeals.)

THE SECOND SCHEDULE—continued.

¹SECOND DIVISION : APPEALS.

Description of appeal.	Period of limitation.	Time from which period begins to run.
150.—Under the ² Code of Criminal Procedure, from a sentence of death passed by a Sessions Judge.	Seven days . . .	The date of the sentence.
151.—From a decree or order of any of the High Courts of Judicature at Fort William, Madras and Bombay ³ [or the Chief Court of the Punjab] in the exercise of its original jurisdiction.	Twenty days . . .	The date of the decree or order.
152.—Under the ⁴ Code of Civil Procedure to the Court of a District Judge.	Thirty days . . .	The date of the decree or order appealed against.
153.—Under the same Code, section 601, to a High Court.	Ditto . . .	The date of the order refusing the certificate.
154.—Under the ² Code of Criminal Procedure, to any Court other than a High Court.	Ditto . . .	The date of the sentence or order appealed against.
155.—Under the same Code, to a High Court, except in the cases provided for by No. 150 and No. 157.	Sixty days . . .	Ditto.
⁵ 156.—Under the Code of Civil Procedure, to a High Court, except in the cases provided for by No. 151 and No. 153.	Ninety days . . .	The date of the decree or order appealed against.
157.—Under the ² Code of Criminal Procedure, from a judgment of acquittal.	Six months . . .	The date of the judgment appealed against.

¹ As to the construction in Upper Burma and British Baluchistan of references to the Code of Civil Procedure, see the Upper Burma Stamps and Limitation Regulation, 1887 (X of 1887), s. 4, printed, Burma Code, Ed. 1889, p. 419, and the British Baluchistan Civil Justice Regulation, 1896 (IX of 1896), s. 95.

² See now the Code of Criminal Procedure, 1898 (Act V of 1898).

³ These words were inserted by the Punjab Courts Act, 1877 (XVII of 1877), s. 18, printed, Punjab Code, Ed. 1888, p. 114.

⁴ See now the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV.

As to limitation for appeals to High Court, Bombay, under ss. 3 and 4 of Act XII of 1888, see s. 5 of that Act, printed, Bombay Code, Vol. I, Ed. 1894, p. 283.

(The Second Schedule.—Third Division: Applications.)

THE SECOND SCHEDULE—continued.

¹ THIRD DIVISION: APPLICATIONS.

Description of application.	Period of limitation.	Time from which period begins to run.
158.—Under the ² Code of Civil Procedure, to set aside an award.	Ten days . .	When the award is submitted to the Court.
159.—For leave to appear and defend a suit under Chapter XXXIX of the ² Code of Civil Procedure.	Ditto . .	When the summons is served.
160.—For an order under section 629 of the same Code, restoring to the file a rejected application for review.	Fifteen days .	When the application for review is rejected.
³ 160A.—For a review of judgment by a Provincial Court of Small Causes, or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.	Ditto . .	The date of the decree or order.
161.—[See No. 173A, <i>infra</i> , p. 106.]		
162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay [or the Chief Court of the Punjab] in the exercise of its original jurisdiction.	Twenty days .	Ditto.
163.—By a plaintiff, for an order to set aside a dismissal by default.	Thirty days .	The date of the dismissal.
164.—By a defendant, for an order to set aside a judgment <i>ex parte</i> .	Ditto . .	The date of executing any process for enforcing the judgment.
165.—Under the ² Code of Civil Procedure by a person dispossessed of immoveable property, and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession.	Ditto . .	The date of the dispossession.

¹ As to the construction in Upper Burma and British Baluchistan of references to the Code of Civil Procedure, see the Upper Burma Stamps and Limitation Regulation, 1887 (X of 1887), s. 4, printed, Burma Code, Ed. 1888, p. 440, and the British Baluchistan Civil Justice Regulation, 1887 (IX of 1887), s. 95.

² See now the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV.

³ Art. 160A was inserted by the Provincial Small Cause Courts Act, 1887 (IX of 1887), s. 36, printed, General Acts, Vol. V.

⁴ These words were inserted by the Punjab Courts Act, 1877 (XVII of 1877), s. 18, printed, Punjab Code, Ed. 1888, p. 114.

(The Second Schedule.—Third Division : Applications.)

THE SECOND SCHEDULE—continued.

THIRD DIVISION : APPLICATIONS—continued.

Description of application.	Period of limitation.	Time from which period begins to run.
166.—To set aside a sale in execution of a decree, on the ground of irregularity in publishing or conducting the sale, ¹ or on the ground that the decree-holder has purchased without the permission of the Court].	Thirty days .	The date of the sale.
167.—Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree, or of dispossession in the delivery of possession to the decree-holder or the purchaser of such property.	Ditto . .	The date of the resistance obstruction or dispossession.
168.—For re-admission of an appeal dismissed for want of prosecution.	Ditto . .	The date of the dismissal.
169.—For a re-hearing of an appeal heard <i>ex parte</i> in the absence of the respondent.	Ditto . .	The date of the decree in appeal.
170.—For leave to appeal as a pauper .	Ditto . .	The date of the decree appealed against.
² [171.—Under section 371 of the Code of Civil Procedure, or under that section and section 532 of the same Code, for an order to set aside an order for abatement or dismissal.]	Sixty days . .	The date of the order for abatement or dismissal.
172.—By a purchaser at an execution-sale, to set aside the sale on the ground that the person whose interest in the property purported to be sold had no saleable interest therein.	Ditto . .	The date of the sale.
173.—For a review of judgment, except in the cases provided for by ³ [No. 160A and] No. 162.	Ninety days .	The date of the decree or order.

¹ These words were added by the Registration and Limitation Acts Amendment Act, 1879 (XII of 1879), s. 1 printed, *infra*, p. 263.

² This No. was substituted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 66 (3), printed, General Acts, Vol V, for No. 171C, which was inserted by the Registration and Limitation Acts Amendment Act, 1879 (XII of 1879), s. 108, printed, *infra*, p. 263. The original article No. 171, and Nos. 171A and 171B, which were inserted by Act XII of 1879, s. 108, were repealed by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 66 (2).

³ This reference was inserted by the Provincial Small Cause Courts Act, 1887 (IX of 1887), s. 36, printed, General Acts, Vol. V.

(The Second Schedule.—Third Division : Applications.)

THE SECOND SCHEDULE—continued.

THIRD DIVISION : APPLICATIONS—continued.

Description of application.	Period of limitation.	Time from which period begins to run.	
¹ 173A.—For the issue of a notice under section 258 of the same Code, ² to show cause why the payment or adjustment therein mentioned should not be recorded as certified.	Ninety days . . .	When the payment or adjustment is made.	X of 1877.
174.—By a creditor of an insolvent judgment-debtor under section 353 of the Code of Civil Procedure. ²	Ditto . . .	The date of the publication of the schedule.	X of 1877.
175.—For payment of the amount of a decree by instalments.	Six months . . .	The date of the decree.	
³ 175A.—Under section 365 of the Code of Civil Procedure by the legal representative of a deceased plaintiff, or under that section and section 582 of the same Code by the legal representative of a deceased plaintiff-appellant or defendant-appellant.	Ditto . . .	The date of the death of the deceased plaintiff or of the deceased plaintiff-appellant or defendant-appellant.	XIV of 1882.
³ 175B.—Under section 366 of the Code of Civil Procedure by a defendant, or under that section and section 582 of the same Code by a plaintiff-respondent or defendant-respondent.	Ditto . . .	The date of the death of the deceased plaintiff or of the deceased defendant-appellant or plaintiff-appellant.	
³ 175C.—Under section 368 of the Code of Civil Procedure to have the legal representative of a deceased defendant made a defendant, or under that section and section 582 of the same Code to have the legal representative of a deceased plaintiff-respondent or defendant-respondent made a plaintiff-respondent or defendant-respondent.	Ditto . . .	The date of the death of the deceased defendant or of the deceased plaintiff-respondent or defendant-respondent.	

¹ No. 173A was originally article 161. As No. 161 it was amended by the Registration and Limitation Acts Amendment Act, 1879 (XII of 1879), s. 108, printed, *infra*, p. 263. It was further amended by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 66 (1) (printed, General Acts, Vol. V), and was by that section given its present place and number in this schedule.

² See now the Code of Civil Procedure, 1882 (Act XIV of 1882), s. 353, printed, General Acts, Vol. IV.

Nos. 175A, 175B and 175C were inserted by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), s. 66 (4), printed, General Acts, Vol. V.

(The Second Schedule.—Third Division : Applications.)

THE SECOND SCHEDULE—continued.

THIRD DIVISION : APPLICATIONS—continued.

	Description of application.	Period of limitation.	Time from which period begins to run.
of 1877.	176.—Under the ¹ Code of Civil Procedure, section 516 or 525, that an award be filed in Court.	Six months . .	The date of the award.
	177.—For the admission of an appeal to Her Majesty in Council.	Ditto . .	The date of the decree appealed against.
	178.—Applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, section 230.	Three years . .	When the right to apply accrues.
of 1877.	179.—For the execution of a decree or order of any Civil Court not provided for by No. 180 or by the ¹ Code of Civil Procedure, section 230.	Ditto ; or, where a certified copy of the decree or order has been registered six years.	<p>1 The date of the decree or order, or</p> <p>2 (where there has been an appeal) the date of the final decree or order of the Appellate Court, or</p> <p>3 (where there has been a review of judgment) the date of the decision passed on the review, or</p> <p>4 (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order, or</p> <p>5 (where the notice next hereinafter mentioned has been issued) the date of issuing a notice under the ¹ Code of Civil Procedure, section 248, or</p>
of 1877.			

¹ See now the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV.

(The Second Schedule.—Third Division: Applications.)

THE SECOND SCHEDULE—continued.

THIRD DIVISION: APPLICATIONS—continued.

Description of application.	Period of limitation.	Time from which period begins to run.
179.—continued.		<p data-bbox="718 396 989 509">6 (where the application is to enforce any payment which the decree or order directs to be made at a [certain date] such date].</p> <p data-bbox="718 548 989 1062"><i>Explanation I.</i>—Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 4 of this No. shall take effect in favour only of such of the said persons or their representatives as it may be made by. But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their representatives, shall take effect in favour of them all.</p> <p data-bbox="718 1084 989 1442">Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been passed jointly against more persons than one, the application, if made</p>

(The Second Schedule.—Third Division : Applications.)

THE SECOND SCHEDULE—continued.

THIRD DIVISION : APPLICATIONS—concluded.

Description of application.	Period of limitation.	Time from which period begins to run.
179.—concluded.		<p>against any one or more of them, or against his or their representatives, shall take effect against them all.</p> <p><i>Explanation II.</i>—"Proper Court" means the Court whose duty it is (whether under section 226 or 227 of the ¹ Code of Civil Procedure or otherwise) to execute the decree or order.</p>
180.—To enforce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of Her Majesty in Council.	Twelve years	<p>When a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right :</p> <p>Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be.</p>

¹ See now the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV.

THE OPIUM ACT, 1878.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. [*Repealed.*]
3. Interpretation-clause.
4. Prohibition of poppy-cultivation and possession, etc., of opium.
5. Power to make rules to permit such matters.
6. Duty on opium imported by land.
7. Warehousing opium.
8. Power to make rules relating to warehouses.
9. Penalty for illegal cultivation of poppy, etc.
10. Presumption in prosecutions under section 9.
11. Confiscation of opium.
12. Order of confiscation by whom to be made.
13. Power to make rules regarding disposal of things confiscated and rewards.
14. Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.
15. Power to seize opium in open places.
Power to detain, search and arrest.
16. Searches how made.
17. Officers to assist each other.
18. Vexatious entries, searches, seizures and arrests.
19. Issue of warrants.
20. Disposal of person arrested or thing seized.
21. Report of arrests and seizures.
22. Procedure in case of illegal poppy-cultivation.
23. Recovery of arrears of fees, duties, etc.
24. Farmer may apply to Collector or other officer to recover amount due to him by licensee.
25. Recovery of penalties due under bond.

SCHEDULE. [*Repealed.*]

ACT No. I of 1878.¹

[9th January, 1878.]

An Act to amend the law relating to Opium.

WHEREAS it is expedient to amend the law relating to opium ; It is hereby enacted as follows :—

1. This Act may be called the Opium Act, 1878.

Short title.

It shall extend to such local areas ² as the Governor General in Council may, by notification in the Gazette of India, from time to time direct ;

Local extent.

And it shall come into force in each of such areas on such day as the Governor General in Council in like manner directs in this behalf.

Commence-
ment.

2. [*Repeal and amendment of enactments.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891) and the Repealing and Amending Act, 1894 (IV of 1894).*

3. In this Act, unless there be something repugnant in the subject or context,—

Interpreta-
tion-clause.

“ Opium ” includes also poppy-heads, preparations or admixtures of opium and intoxicating drugs prepared from the poppy :

¹ For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V, p. 645 ; for Proceedings in Council, see *ibid.*, Supplement, pp. 3015 and 3030, *ibid.*, 1878, pp. 53 and 80.

This Act has been declared in force in the Santhál Parganas by the Santhál Parganas' Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas' Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol. I, Ed. 1889, p. 597 ; in British Baluchistan by the Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, printed, Baluchistan Code, Ed. 1890, p. 69 ; and in Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), s. 3.

² It has been extended, by notification in the Gazette of India, under this section to the following local areas from the date specified against each :—

the N.-W. Provinces and Oudh, from 2nd February, 1878, see Gazette of India, 1878, Pt. I, p. 68 ;

the Bombay Presidency, from 1st April, 1878, see *ib.*, p. 231 ;

Bengal, from 21st August, 1878, see *ib.*, p. 526 ;

Lower Burma, from 29th March, 1879, see *ib.*, 1879, Pt. I, p. 75 ;

Assam, from 1st April, 1879, see *ib.*, p. 259 ;

the Central Provinces, from 28th June, 1879, see *ib.*, p. 441 ;

Ajmere-Merwara, from 2nd August, 1879, see *ib.*, p. 466 ;

the Punjab, from 1st April, 1880, see *ib.*, 1880, Pt. I, p. 16 ;

the Madras Presidency, from 1st July, 1880, see *ib.*, p. 513 ;

Coorg, from 1st April, 1882, see *ib.*, 1882, Pt. I, p. 135 ; and

Upper Burma (except the Shan States), from 15th September, 1888, see *ib.*, 1888, Pt. I, p. 421 (Notifications Nos. 75 and 5052, dated 15th September, 1888).

¹ "Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere a Magistrate of the first class or (when specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class :

"import" means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government :

"export" means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government :

"transport" means to remove from one place to another within the territories administered by the same Local Government.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

- (a) cultivate the poppy ;
- (b) manufacture opium ;
- (c) possess opium ;
- (d) transport opium ;
- (e) import or export opium ; or
- (f) sell opium.

5. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules ² consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters :—

- (a) the cultivation of the poppy ;
- (b) the manufacture of opium ;

Prohibition
of poppy-
cultivation
and posses-
sion, etc., of
opium.

Power to
make rules
to permit
such matters.

¹ Cf. definition in the last clause of s. 3 of the Code of Criminal Procedure, 1898 (Act V of 1898).

² For rules made under this section for—

- (1) Ajmere-Merwara, *see* Gazette of India, 1898, Pt. II, p. 563.
- (2) Assam, *see* Notification No. 3-R., dated 23rd January, 1879, Assam Excise Manual.
- (3) British Baluchistan, *see* Gazette of India, 1898, Pt. II, p. 124.
- (4) Bengal, *see* Calcutta Gazette, 1898, Pt. I, p. 195.
- (5) Bombay, *see* Bombay List of Local Rules and Orders, pp. li to liii, Vol. I, Ed. 1896, and Bombay Government Gazette, 1897, Pt. I, p. 1084.
- (6) Burma, *see* Burma Excise Manual, Ed. 1895.
- (7) The Central Provinces, *see* Central Provinces Gazette, 1898, Pt. III, p. 86.
- (8) Coorg, *see* Coorg District Gazette Extraordinary dated 15th February, 1898, p. 2.
- (9) Madras, *see* Madras List of Local Rules and Orders Vol. I, Ed. 1898, p. 110.
- (10) The North Western Provinces and Oudh, *see* North-Western Provinces and Oudh Gazette, 1898, Pt. I, p. 562.

- (c) the possession of opium ;
- (d) the transport of opium ;
- (e) the importation or exportation of opium ; and
- (f) the sale of opium, and the farm of duties leviable on the sale of opium by retail :

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea-
VIII of 1878. customs¹ for the time being in force or under section 6.

6. The Governor General in Council may, from time to time, by notification in the Gazette of India,² impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof, and may alter or abolish any duty so imposed. Duty on opium imported by land.

7. The Governor General in Council may, by order notified in the Gazette of India,— Warehousing opium.

- (a) authorize any Local Government to establish warehouses³ for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and
- (b) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

- (c) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, or intended to be exported thence, and
- (d) cancel any such declaration.

An order under clause (b) shall cancel all previous declarations under clause (c) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

8. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, Power to make rules

¹ See the Sea Customs Act, 1878 (VIII of 1878) (Ch. VIII), printed, *infra*, p. 187.

² For notifications issued under this section, see Gazette of India, Pt. I, 1894, p. 657, 1895, p. 834, and 1896, pp. 146 and 570.

³ For notification authorizing the Government of Bombay to establish a warehouse under this section, see List of Bombay Local Rules and Orders, Vol. I, Ed. 1896, p. lv.

relating to
warehouses.

make rules consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for
illegal cultivation of
poppy, etc.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

- (a) cultivates the poppy, or
- (b) manufactures opium, or
- (c) possesses opium, or
- (d) transports opium, or
- (e) imports or exports opium, or
- (f) sells opium, or
- (g) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rules,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both;

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

Presumption
in prosecutions under
section 9.

10. In prosecutions under section 9, it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Confiscation
of opium.

11. In any case in which an offence under section 9 has been committed,—

- (a) the poppy so cultivated,
- (b) the opium in respect of which any offence under the same section has been committed,
- (c) where, in the case of an offence under clause (d) or (e) of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,
- (d) where, in the case of an offence under clause (f) of the same section, the offender has in his possession any opium other than the opium in

respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate. Order of confiscation by whom be made.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

13. The Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local Gazette, make rules¹ consistent with this Act to regulate— Power to make rules regarding disposal of things confiscated, and reward

(a) the disposal of all things confiscated under this Act, and

(b) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

¹ See List of rules noted under s. 5, *supra*, p. 112, which were made also under the powers conferred by this section.

this Act is manufactured, kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

- (a) enter into any such building, vessel or place ;
- (b) in case of resistance, break open any door and remove any other obstacle to such entry ;
- (c) seize such opium and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ; and
- (d) detain and search, and if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to
seize opium
in open
places.

15. Any officer of any of the said departments may—

- (a) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ;
- (b) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Power to
detain, search
and arrest.

Searches how
made.

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure.¹

Officers to
assist each
other.

17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Vexatious
entries,
searches,
seizures and
arrests.

18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person, shall for every such offence be punished with fine not exceeding five hundred rupees.

Issue of war-
rants.

19. The Collector of the district, Deputy Commissioner or other officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant for the arrest of any

¹ See now the Code of Criminal Procedure, 1898 (Act V of 1898).

person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure.¹

20. Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station ; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

Disposal of person arrested or thing seized.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Report of arrests and seizures.

22. In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf ; and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail :

Procedure in case of illegal poppy-cultivation.

Provided that, wherever Act No. XIII of 1857 ² (*An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal*), or any part thereof is in force, nothing in this section shall apply to such cultivation.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

Recovery of arrears of fees, duties, etc.

and any arrear due from any farmer of opium-revenue,

may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land-revenue.

¹ See now the Code of Criminal Procedure, 1898 (Act V of 1898).

² Printed, Bengal Code, Vol. I., Ed. 1889, p. 316 ; also North-Western Provinces and Oudh Code, Ed. 1892, p. 93 ; and Central Provinces Code, Ed. 1891, p. 23.

(Secs. 24-25. Schedule.)

Farmer may
apply to
Collector or
other officer
to recover
amount due
to him by
licensee.

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant ; and, on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue,¹ and shall pay any amount so recovered to the applicant :

Provided that the execution of any process issued by such Collector, ² [Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer :

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

Recovery of
penalties due
under bond.

25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872,³ section IX of 1872. 74 ; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue.¹

SCHEDULE.

[ENACTMENT REPEALED.]

[*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

¹ See the Revenue Recovery Act, 1890 (I of 1890), printed, General Acts, Vol. V.

² "Deputy Commissioner" was substituted for "Deputy Collector" by the Repealing and Amending Act, 1891 (XII of 1891), Sch. II.

³ Printed, General Acts, Vol. II, Ed. 1898, p. 299.

(Preliminary. Secs. 1-3. Procedure on finding Treasure. Sec. 4.)

ACT No. VI of 1878.¹

[13th February, 1878.]

An Act to amend the law relating to Treasure-trove.

WHEREAS it is expedient to amend the law relating to treasure-trove; It Preamble.
is hereby enacted as follows :—

Preliminary.

1. This Act may be called the Indian Treasure-trove Act, 1878.

Short title.

It extends to the whole of British India.

Extent.

And it shall come into force at once.

Commence-
ment.

2. [Repeal of enactments.] Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

3. In this Act—

Interpre-
tation-clause
"Treasure."

"treasure" means anything of any value hidden in the soil, or in any-
thing affixed thereto :

"Collector" means (1) any Revenue-officer in independent charge of a "Collector."
district, and (2) any officer appointed by the Local Government to perform the
functions of a Collector under this Act.²

When any person is entitled, under any reservation in an instrument of Owner.
transfer of any land or thing affixed thereto to treasure in such land or thing,
he shall, for the purposes of this Act, be deemed to be the owner of such land
or thing.

Procedure on finding Treasure.

4. Whenever any treasure exceeding in amount or value ten rupees is found, Notice by
the finder shall, as soon as practicable, give to the Collector notice in writing—
finder of
treasure.
(a) of the nature and amount or approximate value of such treasure ;

¹ For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V, p. 1463 ; for discussions in Council, see *ibid*, Supplement, pp. 1288 and 1326 ; *ibid*, 1878, pp. 207 and 287.

This Act has been declared in force in—

Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), s. 3 ;
the Santhál Parganas by the Santhál Parganas' Settlement Regulation (III of 1872),
s. 3, as amended by the Santhál Parganas' Laws Regulation, 1886 (III of 1886), s. 3,
printed, Bengal Code, Vol. I, Ed. 1889, p. 597 ;

Upper Burma generally (except the Shan States), by the Upper Burma Laws Act, 1886
(XX of 1886), s. 6, printed, Burma Code, Ed. 1889, p. 363.

It has also been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874
(XIV of 1874), printed, General Acts, Vol. II, to be in force in the following portions of the de-
regionalized Scheduled Districts of the Chutia Nagpur Division, namely :—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the
Kolhán in the District of Singbhum—see Gazette of India, 1881, Pt. I, p. 504. The
District of Lohárdaga included at this time the present District of Palamanu, which was
separated in 1894.

² In Bombay, Mamlatdars have been appointed to perform the functions of Collectors under
the Act, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 163.

(Procedure on finding Treasure. Secs. 5-8.)

(b) of the place in which it was found ;

(c) of the date of the finding ;

and either deposit the treasure in the nearest Government treasury, or give the Collector such security as the Collector thinks fit, to produce the treasure at such time and place as he may from time to time require.

Notification
requiring
claimants to
appear.

5. On receiving a notice under section 4, the Collector shall, after making such enquiry (if any) as he thinks fit, take the following steps (namely) :—

(a) he shall publish a notification in such manner as the Local Government from time to time prescribes in this behalf, to the effect that on a certain date (*mentioning it*) certain treasure (*mentioning its nature, amount and approximate value*) was found in a certain place (*mentioning it*) ; and requiring all persons claiming the treasure, or any part thereof, to appear personally or by agent before the Collector on a day and at a place therein mentioned, such day not being earlier than four months, or later than six months, after the date of the publication of such notification ;

(b) when the place in which the treasure appears to the Collector to have been found was at the date of the finding in the possession of some person other than the finder, the Collector shall also serve on such person a special notice in writing to the same effect.

Forfeiture of
right on
failure to
appear.

6. Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under section 5, shall forfeit such right.

Matters to be
enquired into
and deter-
mined by the
Collector.

7. On the day notified under section 5, the Collector shall cause the treasure to be produced before him, and shall enquire as to and determine —

(a) the person by whom, the place in which, and the circumstances under which, such treasure was found ; and

(b) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.

Time to be
allowed for
suit by
person claim-
ing the
treasure.

8. If, upon an enquiry made under section 7, the Collector sees reason to believe that the treasure was hidden within one hundred years before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

(Procedure on finding Treasure. Secs. 9-12.)

9. If upon such enquiry the Collector sees no reason to believe that the treasure was so hidden ; or

When
treasure may
be declared
ownerless.

if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector ; or

if such suit is instituted within such period and the plaintiff's claim is finally rejected ;

the Collector may declare the treasure to be ownerless.

Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Chief Controlling Revenue-authority.

Appeal
against such
declaration.

Subject to such appeal, every such declaration shall be final and conclusive.

10. When a declaration has been made in respect of any treasure under section 9, such treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof, or be divided between him and the owner of the place in which it has been found in manner hereinafter provided.

Proceedings
subsequent to
declaration.

11. When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under section 5 and claimed a share of the treasure as owner of the place in which it has been found, the Collector shall deliver such treasure to the finder thereof.

When no
other person
claims as
owner of
place, trea-
sure to be
given to
finder.

12. When a declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Collector shall proceed to divide the treasure between the finder and the person so claiming according to the following rule (namely) :—

When only
one such per-
son claims
and his claim
is not dis-
puted, trea-
sure to be
divided,

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, three-fourths of the treasure shall be allotted to such finder and the residue to such person. If such finder and such person have entered into any such agreement, the treasure shall be disposed of in accordance therewith :

Provided that the Collector may, in any case, if he thinks fit, instead of dividing any treasure as directed by this section,

- (a) allot to either party the whole or more than his share of such treasure, on such party paying to the Collector for the other party such sum of money as the Collector may fix as the equivalent of the share of such other party, or of the excess so allotted, as the case may be ;
or

(Procedure on finding Treasure. Secs. 13-16.)

- (b) sell such treasure or any portion thereof by public auction, and divide the sale-proceeds between the parties according to the rule hereinbefore prescribed :

Provided also that, when the Collector has by his declaration under section 9 rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 9 by the person whose claim has been so rejected, or, when an appeal has been so presented, after such appeal has been dismissed.

and shares
to be deli-
vered to
parties.

When the Collector has made a division under this section, he shall deliver to the parties the portions of such treasure, or the money in lieu thereof to which they are respectively entitled under such division.

In case of
dispute as to
ownership of
place, pro-
ceedings to
be stayed.

13. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

Settlement of
such dispute,

14. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right ; and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants.

and division
thereupon.

15. If any such suit is instituted and the plaintiff's claim is finally established therein, the Collector shall, subject to the provisions of section 12, divide the treasure between him and the finder.

If no such suit is instituted as aforesaid, or if the claims of the plaintiffs in all such suits are finally rejected, the Collector shall deliver the treasure to the finder.

Power to ac-
quire the
treasure on
behalf of
Government.

16. The Collector may, at any time after making a declaration under section 9, and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on behalf of the Government the treasure, or any specified portion thereof, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion, together with one-fifth of such value, and may place such sum in deposit in his treasury to the credit of such persons ; and thereupon such treasure or portion shall be deemed to be the property of Government,

(Procedure on finding Treasure. Secs. 17-19. Penalties. Secs. 20-21.
Schedule.)

and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

17. No decision passed or act done by the Collector under this Act shall be called in question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred.

Decision of Collector final, and no suit to lie against him for acts done *bond fide*.

18. A Collector making any enquiry under this Act may exercise any power conferred by the Code of Civil Procedure ¹ on a Civil Court for the trial of suits.

Collector to exercise powers of Civil Court.

19. The Local Government may, from time to time, make rules ² consistent with this Act to regulate proceedings hereunder.

Power to make rules.

Such rules shall, on being published in the local Gazette, have the force of law.

Penalties.

20. If the finder of any treasure fails to give the notice, or does not either make the deposit or give the security, required by section 4, or alters or attempts to alter such treasure so as to conceal its identity, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

Penalty on finder failing to give notice, etc.

and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

21. If the owner of the place in which any treasure is found abets, within of 1860. the meaning of the Indian Penal Code,³ any offence under section 20, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in Her Majesty,

Penalty on owner abetting offence under section 20.

and he shall, on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine, or with both.

SCHEDULE.

[Rep. by the Repealing and Amending Act, 1891 (XII of 1891).]

¹ See Act XIV of 1882, s. 3, printed, General Acts, Vol. IV.

² For rules made under the powers conferred by this section in—

Bombay—see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 163;

Burma—see Burma Laws List, Ed. 1897, p. 80;

Madras—see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 111;

North-Western Provinces and Oudh—see North-Western Provinces and Oudh List of

Local Rules and Orders, Ed. 1894, p. 55;

Central Provinces—see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 23;

Assam—see Assam List of Local Rules and Orders, Ed. 1893, p. 107.

Printed, General Acts, Vol. I, Ed. 1898, p. 266.

THE INDIAN FOREST ACT, 1878.

CONTENTS.

CHAPTER I.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
Commencement.
Extension.
Repeal of enactments.
2. Interpretation-clause.

CHAPTER II.

OF RESERVED FORESTS.

3. Power to reserve forests.
4. Notification by Local Government.
5. Bar of accrual of forest-rights.
6. Proclamation by Forest Settlement-officer.
7. Inquiry by Forest Settlement-officer.
8. Powers of Forest Settlement-officer.
9. Extinction of rights.
- 9A. Treatment of claims relating to practice of shifting cultivation.
10. Power to acquire land over which right is claimed.
11. Order on claims to rights of pasture or to forest-produce.
12. Record to be made by Forest Settlement-officer.
13. Record where he admits claim.
14. Exercise of rights admitted.
15. Commutation of rights.
16. Appeal from order passed under section 10, 11, 14 or 15.
17. Appeal under section 16.
18. Pleadings.
19. Notification declaring forest reserved.
20. Publication of translation of such notification in neighbourhood of forest.
21. Power to revise arrangement made under section 14 or 17.
22. No right acquired over reserved forest, except as here provided.
23. Rights not to be alienated without sanction.
24. Power to stop ways and water-courses in reserved forests.
25. Acts prohibited in such forests.
26. Power to declare forest no longer reserved.

CHAPTER III.
OF VILLAGE-FORESTS.

SECTIONS.

27. Formation of village-forests.
-

CHAPTER IV.
OF PROTECTED FORESTS.

28. "Protected forests."
29. Power to issue notification—
 (a) reserving trees,
 (b) closing forest,
 (c) prohibiting collection of forest-produce, etc., and breaking up or clearing of land.
30. Publication of translation of such notification in neighbourhood.
31. Power to make rules for protected forests.
32. Penalties for acts in contravention of notification under section 29.
33. Nothing in this Chapter to prohibit acts done in certain cases.
-

CHAPTER V.

FORESTS UNDER CONSERVANCY-ADMINISTRATION WHEN THIS ACT COMES INTO FORCE.

34. Forests under conservancy-administration when this Act comes into force.
-

CHAPTER VI.

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT.

35. Protection of forests for special purposes.
36. Power to assume management of forests.
37. Expropriation of forests in certain cases.
38. Protection of forests at request of owners.
-

CHAPTER VII.

OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE.

39. Power to impose duty on timber and other forest-produce.
 Power to fix value for *ad valorem* duty.
40. Limit not to apply to purchase-money or royalty.

CHAPTER VIII.

OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT.

SECTIONS.

41. Power to make rules to regulate transit of forest-produce.
 42. Penalty for breach of rules made under section 41.
 43. Government and Forest-officers not liable for damage to forest-produce at dépôt.
 44. All persons bound to aid in case of accident at dépôt.
-

CHAPTER IX.

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER.

45. Certain kinds of timber to be deemed property of Government until title thereto proved and may be collected accordingly.
 46. Notice to claimants of drift-timber.
 47. Procedure on claim preferred to such timber.
On rejection of claim to such timber, claimant may institute suit.
 48. Disposal of unclaimed timber.
 49. Government and its officers not liable for damage to such timber.
 50. Payments to be made by claimant before timber is delivered to him.
 51. Power to make rules and prescribe penalties.
-

CHAPTER X.

PENALTIES AND PROCEDURE.

52. Seizure of property liable to confiscation.
Application for confiscation.
53. Procedure thereupon.
54. Forest-produce, tools, etc., when liable to confiscation.
55. Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.
56. Procedure when offender not known, or cannot be found.
57. Procedure as to perishable property seized under section 52.
58. Appeal from orders under sections 54, 55 and 56.
59. Property when to vest in Government.
60. Saving of power to release property seized.
61. Punishment for wrongful seizure.
62. Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary-marks.
63. Power to arrest without warrant.
64. Power to prevent commission of offence.
65. Power to try offences summarily.
66. Operation of other laws not barred.

SECTIONS.

- 67. Power to compound offences.
 - 68. Presumption that forest-produce belongs to Government.
-

CHAPTER XI.

CATTLE-TRESPASS.

- 69. Cattle-trespass Act, 1871, to apply.
 - 70. Power to alter fines fixed by that Act.
-

CHAPTER XII.

OF FOREST-OFFICERS.

- 71. Local Government may invest Forest-officers with certain powers.
 - 72. Forest-officers deemed public servants.
 - 73. Indemnity for acts done in good faith.
 - 74. Forest-officers not to trade.
-

CHAPTER XIII.

SUBSIDIARY RULES.

- 75. Additional powers to make rules.
 - 76. Penalties for breach of rules.
 - 77. Rules when to have force of law.
-

CHAPTER XIV.

MISCELLANEOUS.

- 78. Persons bound to assist Forest-officers and Police-officers.
 - 79. Management of forests the joint property of Government and other persons.
 - 80. Failure to perform service for which a share in produce of Government forest is enjoyed.
 - 81. Recovery of money due to Government.
 - 82. Lien on forest-produce for such money.
Power to sell such produce.
 - 83. Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act, 1894.
 - 84. Recovery of penalties due under bond.
-

ACT No. VII OF 1878.¹

[8th March, 1878.]

An Act to amend the law relating to forests, the transit of forest-produce and the duty leviable on timber.

Preamble.

WHEREAS it is expedient to amend the law relating to forests, the transit of forest-produce and the duty leviable on timber; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.
Commence-
ment.

1. This Act may be called the Indian Forest Act, 1878 :

It shall come into force at once in the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the Lower Provinces, the North-Western Provinces, and the Punjab (except the district of Hazára),² and the Chief Commissioners of Oudh, the Central Provinces and Assam.³

Extension.

And any other Local Government may from time to time, with the

¹ For the Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 11; for the first Report of the Select Committee, *see ibid*, Pt. V, p. 400; for Proceedings in Council, *see ibid*, Supplement, pp. 86, 121, 2744, and *ibid*, 1878, pp. 326 and 437.

This Act has been declared in force in the Santhál Parganas by the Santhál Parganas' Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas' Laws Regulation, 1886 (III of 1886) [Bengal Code, Vol. I, Ed. 1889, p. 606], and in Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), s. 3.

The Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, p. 467, to be in force in the following Scheduled Districts in the Chota Nagpore Division, namely: the Districts of Házariabágh, Lohárdaga and Mámbhum, and Pargana Dhálbhum and the Kclhán in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohardaga included at this time the present District of Palamau, which was separated in 1894.

² For the forest law in force in the Hazára District, *see* the Hazára Forest Regulation, 1893 (VI of 1893).

³ Act VII of 1878 was repealed in Assam from the 1st April, 1892, *see* the Assam Forest Regulation, 1891 (VII of 1891), ss. 1 (3), 2 (1), printed, Assam Code, Ed. 1897, p. 298.

(Chapter I.—Preliminary. Sec. 2.)

previous sanction of the Governor General in Council, extend,¹ by notification in the local official Gazette, this Act to all or any of the territories for the time being under its administration.

On and from the date on which this Act comes into force in any of the said territories, the enactments mentioned in the schedule hereto annexed shall be repealed in such territories. But all rules made under or validated by any of the said enactments and in force at the date of such repeal shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder. Repeal of enactments.

2. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

“Forest-officer” means any person whom the Governor General in Council, or the Local Government or any officer empowered by the Governor General in Council or the Local Government in this behalf, may from time to time appoint by name, or as holding an office, to carry out all or any of the purposes of this Act, or to do anything required by this Act or any rule made under this Act to be done by a Forest-officer :

² [“tree” includes palms, bamboos, stumps, brushwood and canes :]

³ [“timber” includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not :]

³ “forest-produce” includes—

(a) the following, whether found in, or brought from, a forest or not, that is to say :—

timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers and myrabolams, and

¹ Act VII of 1878 has been extended under this power to the Province of Coorg, *see* Coorg District Gazette, 1887, Pt. I, p. 640.

For Madras, Ajmere-Merwāra, Burma, British Baluchistan and Assam there are special Forest laws, *see* the Madras Forest Act, 1882 (V of 1882), printed, Madras Code, Ed. 1883, p. 378 ; the Ajmere Forest Regulation, 1874 (VI of 1874), printed, Ajmere Code, Ed. 1893, p. 140 ; the Burma Forest Act, 1881 (XIX of 1881) a revised edition of which, as modified up to 1st July, 1890, was published by the Legislative Department ; the Upper Burma Forest Regulation, 1887, (VI of 1887), printed, Burma Code, Ed. 1889, p. 425 ; the British Baluchistan Forest Regulation, 1890 (V of 1890), printed, Baluchistan Code, Ed. 1890, p. 103 ; the Assam Forest Regulation, 1891 (VII of 1891), printed, Assam Code, Ed. 1887, p. 298.

² This definition of “tree” was substituted for the original definition by the Forest Act, 1890 (V of 1890), s. 2 (1). The wording of the original clause only referred to “bamboos, stumps, and brushwood”.

³ These definitions of “timber” and “forest-produce” were substituted for the original definitions by the Forest Act, 1890 (V of 1890), s. 2 (2) and (3), respectively, printed, General Acts, Vol. V,

(Chapter II.—Of Reserved Forests. Secs. 3-4.)

(b) the following when found in, or brought from, a forest, that is to say :—

- (i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees,
- (ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,
- (iii) wild animals, and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and
- (iv) peat, surface-soil, rock and minerals (including limestone, laterite, mineral oils, and all products of mines or quarries) :

“forest-offence” means an offence punishable under this Act, or under any rule made under this Act :

“cattle” includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids :

“river” includes streams, canals, creeks and other channels, natural or artificial.

CHAPTER II.

OF RESERVED FORESTS.¹

Power to
reserve
forests.

3. The Local Government may from time to time constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Notification
by Local
Government.

4. Whenever it is proposed to constitute any land a reserved forest, the Local Government may publish a notification in the local official Gazette—

- (a) declaring that it is proposed to constitute such land a reserved forest ;
- ² [(b) specifying, as nearly as possible, the situation and limits of such land ; and]
- (c) appointing an officer (hereinafter called “the Forest-Settlement-officer”) to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest-produce, and to deal with the same as provided in this Chapter.

¹ As to the application of provisions relating to reserved forests (1) to village-forests, *see* s. 27, last paragraph ; (2) to forests and lands not the property of the Government, *see* ss. 36, 38 ; (3) to forests, waste-land or produce the joint property of the Government and other persons, *see* s. 79, *infra*.

² This clause was substituted for the original cl. (b) by the Forest Act, 1890 (V of 1890), s. 3 [printed, General Acts, Vol. V], which ran as follows : “ (b) specifying the limits of such forest ; and ”.

(Chapter II.—Of Reserved Forests. Secs. 5-7.)

Explanation.—For the purpose of clause (b) of this section, it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well-known or readily intelligible boundaries.

The officer appointed under clause (c) of this section shall ordinarily be a person not holding any forest-office except that of Forest-Settlement-officer.

Nothing in this section shall prevent the Local Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest-Settlement-officer under this Act.

5. During the interval between the publication of such notification and the date fixed by the notification under section 19, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of Government or some person in whom such right was vested when the former notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land ¹[except in accordance with rules prescribed by the Local Government].

Bar of accrual of forest-rights.

6. When a notification has been issued under section 4, the Forest-Settlement-officer shall publish in the language of the country, in every town and village in the neighbourhood of the land comprised therein, a proclamation—

Proclamation by Forest-Settlement-officer.

² [(a) specifying, as nearly as possible, the situation and limits of the proposed forest;]

(b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or 5 either to present to such officer within such period a written notice specifying, or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

7. The Forest-Settlement-officer shall take down in writing all statements made under section 6, and shall, at some convenient place, inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or 5 and not claimed under section 6 so far as the same

Inquiry by Forest-Settlement-officer.

¹ These words were added by the Forest Act, 1890 (V of 1890), s. 4, printed, General Acts, Vol. V.

² This clause was substituted for the original cl. (a) by s. 5 of the same Act, which ran as follows: “ (a) specifying the limits of the proposed forest.”

(Chapter II.—Of Reserved Forests. Secs. 8-10.)

may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

Powers of
Forest-Set-
tlement
officer.

8. For the purposes of such inquiry, the Forest-Settlement-officer may exercise the following powers, that is to say :—

(a) power to enter, by himself or any officer authorized by him for the purpose, upon any land, and to survey, demarcate and make a map of the same ; and

(b) the powers of a Civil Court in the trial of suits.

Extinction of
rights.

9. Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by enquiry under section 7, shall be extinguished, unless, before the notification under section 19 is published, the person claiming them satisfies the Forest-Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

Treatment of
claims relat-
ing to prac-
tice of shift-
ing cultiva-
tion.

¹ 9A. (1) In the case of a claim relating to the practice of shifting cultivation, the Forest-Settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the Local Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(2) On receipt of the statement and opinion the Local Government may make an order permitting or prohibiting the practice wholly or in part.

(3) If such practice is permitted wholly or in part, the Forest-Settlement-officer may arrange for its exercise—

(a) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or

(b) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practise shifting cultivation therein under such conditions as he may prescribe.

All arrangements made under this sub-section shall be subject to the previous sanction of the Local Government.

(4) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the Local Government.

10. In the case of a claim to a right in or over any land, other than a right of way or pasture, or to forest-produce or a water-course, the Forest-

Power to
acquire land
over which
right is
claimed.

¹ S 9A was inserted by the Forest Act, 1890 (V of 1890), s. 6, printed, General Acts, V ol.V.

(Chapter II.—Of Reserved Forests. Secs. 11-13.)

Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

If such claim is admitted in whole or in part, the Forest-Settlement-officer shall either (1) exclude such land from the limits of the proposed forest; or (2) come to an agreement with the owner thereof for the surrender of his rights; or (3) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1870.¹

For the purpose of so acquiring such land—

- (a) the Forest-Settlement-officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1870;¹
- (b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;²
- (c) the provisions of the preceding sections of that Act³ shall be deemed to have been complied with; and
- (d) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

11. In the case of a claim to rights of pasture or to forest-produce, the Forest-Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

Order on claims to rights of pasture or to forest-produce.

12. The Forest-Settlement-officer, when passing any order under section 11, shall record, so far as may be practicable,—

Record to be made by Forest-Settlement-officer.

(a) the name, father's name, caste, residence and occupation of the person claiming the right;

(b) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any), in respect of which the exercise of such rights is claimed.

13. If the Forest-Settlement-officer admits in whole or in part any claim under section 11, he shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest-produce which he is from time to time authorised to take or receive, or such other

Record where he admits claim.

¹ Read now the Land Acquisition Act, 1894 (I of 1894), s. 2.

² This reference to s. 9 of Act X of 1870 should now be read as referring to s. 9 of Act I of 1894, *see* s. 2 of the latter Act.

³ This reference to the Land Acquisition Act, 1870 (X of 1870) should now be read as referring to the Land Acquisition Act, 1894 (I of 1894), *see* s. 2 of the latter Act.

(Chapter II.—Of Reserved Forests. Secs. 14-16.)

particulars as the case may require. He shall also record whether the timber or other forest-produce obtained by the exercise of the rights claimed may be sold or bartered.

Exercise of
rights
admitted.

14. After making such record, the Forest-Settlement-officer shall, to the best of his ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted. For this purpose the Forest-Settlement-officer may—

- (a) set out some other forest-tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted ; or
- (b) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants ; or
- (c) record an order, continuing to such claimants a right of pasture or to forest-produce (as the case may be) to the extent so admitted, at such seasons within such portions of the proposed forest and under such rules, as may from time to time be prescribed by the Local Government.

Commuta-
tion of
rights.

15. In case the Forest-Settlement-officer finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section 14 as shall ensure the continued exercise of the said rights to the extent so admitted, he shall (subject to such rules as the Local Government may from time to time prescribe in this behalf) commute such rights, either by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

Appeal from
order passed
under sec-
tion 10, 11,
14 or 15.

16. Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the Local Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest-Settlement-officer under section 10, 11, 14 or 15, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector or Deputy Commissioner, as the Local Government may from time to time, by notification in the local official Gazette, appoint by name, or as holding an office, to hear appeals, from such orders :

Provided that if the Local Government establishes (as it is hereby empowered to do) a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the Local Government, such appeals shall be presented to such Court.

(Chapter II.—Of Reserved Forests. Secs. 17-19.)

17. Every appeal under section 16 shall be made by petition in writing, and may be delivered to the Forest-Settlement-officer, who shall forward it without delay to the authority competent to hear the same. Appeal under section 16.

If the appeal be to an officer appointed under section 16, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

If the appeal be to the Forest Court, the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

The order passed thereon by such officer or Court, or by the majority of the members of such Court, shall be final, subject to revision by the Local Government.

18. The Local Government, or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest-Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act. Pleaders.

19. When the following events have occurred (namely) :—

- (a) the period fixed under section 6 for preferring claims has elapsed, and all claims (if any) made within such period have been disposed of by the Forest-Settlement-officer; and
- (b) if such claims have been made, and the period limited by section 16 for appealing from the orders passed on such claims has elapsed and all appeals (if any) presented within such period have been disposed of by the appellate officer or Court; and
- (c) all lands (if any) to be included in the proposed forest, which the Forest-Settlement-officer has, under section 10, elected to acquire under the Land Acquisition Act, 1870,¹ have become vested in the Government under section 16 of that Act,²

Notification
declaring
forest
reserved.

the Local Government may publish a notification in the local official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which it is intended to reserve, and declaring the same to be reserved from a date fixed by such notification.

From the date so fixed such forest shall be deemed to be a reserved forest.

¹ Read now the Land Acquisition Act, 1894 (I of 1894), s. 2.

² This reference to s. 16 of Act X of 1870 should now be read as referring to s. 16 of Act I of 1894, see s. 2 of the latter Act.

(Chapter II.—Of Reserved Forests. Secs. 20-25.)

Publication of translation of such notification in neighbourhood of forest.
Power to revise arrangement made under section 14 or 17.

20. The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the language of the country to be published in every town and village in the neighbourhood of the forest.

21. The Local Government may, within five years from the publication of any notification under section 19, revise any arrangement made under section 14 or 17, and may, for this purpose, rescind or modify any order made under section 14 or 17, and direct that any one of the proceedings specified in section 14 be taken in lieu of any other of such proceedings, or that the rights admitted under section 11 be commuted under section 15.

No right acquired over reserved forest, except as here provided.

22. No right of any description shall be acquired in or over a reserved forest, except by succession or under a grant or contract in writing made by or on behalf of the Government or of some person in whom such right was vested when the notification under section 19 was issued.

Rights not to be alienated without sanction.

23. Notwithstanding anything contained in section 22, no right continued under section 14, clause (c), shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the sanction of the Local Government :

Provided that when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 13.

Power to stop ways and water-courses in reserved forests.

24. The Forest-officer may from time to time, with the previous sanction of the Local Government or of any officer duly authorised in that behalf, stop any public or private way or water-course in a reserved forest :

Provided that a substitute for the way or water-course so stopped, which the Local Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest-officer in lieu thereof.

Acts prohibited in such forests.

25. Any person who—

(a) makes any fresh clearing prohibited by section 5, or

¹[(b) sets fire to a reserved forest, or, in contravention of any rules ² made by the Local Government, kindles any fire, or leaves any fire burning, in such manner as to endanger such a forest ;]

¹ This part of cl. (b) was substituted for the original clause by the Forest Act, 1890 (V of 1890), s. 7, which ran as follows : “(b) sets fire to a reserved forest, or kindles any fire in such manner as to endanger the same ;”

² For rules made under this clause for (1) Bombay, see pp. 166 and 167 of the Bombay List of Local Rules and Orders, Ed. 1896 ; (2) the Central Provinces, see p. 25 of the Central Provinces List of Local Rules and Orders, Ed. 1896 ; (3) the North-Western Provinces and Oudh, see p. 59 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.

(Chapter II.—Of Reserved Forests. Sec. 26.)

or who, in a reserved forest,—

- (c) kindles, keeps or carries any fire except at such seasons as the Forest-officer may from time to time notify in this behalf;
- (d) trespasses or pastures cattle, or permits cattle to trespass;
- (e) causes any damage by negligence in felling any tree or cutting or dragging any timber;
- (f) fells, girdles, lops, taps or burns any tree, or strips off the bark or leaves from, or otherwise damages, the same;
- (g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes any forest-produce;
- (h) clears or breaks up any land for cultivation or any other purpose; or,
- (i) in contravention of any rules which the Local Government may from time to time prescribe, ¹[kills or catches elephants,] hunts, shoots, fishes, poisons water or sets traps or snares,

shall be punished with imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

Nothing in this section shall be deemed to prohibit (a) any act done by permission in writing of the Forest-officer, or under any rule made by the Local Government; or (b) the exercise of any right continued under section 14, clause (c), or created by grant or contract in writing made by or on behalf of Government under section 22.

Whenever fire is caused wilfully or by gross negligence in a reserved forest the Local Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

26. The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under this Act shall cease to be a reserved forest.

Power to
declare forest
no longer
reserved.

From the date so fixed, such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

¹ These words are repealed in the North-Western Provinces, Oudh, the Central Provinces and Coorg, and in local areas to which the Elephants' Preservation Act, 1879, is extended—See Act VI of 1879, s. 2, printed, *infra*, p. 257.

(Chapter III.—Of Village-forests. Sec. 27. Chapter IV.—Of Protected Forests. Sec. 28.)

CHAPTER III.

OF VILLAGE-FORESTS.

Formation of
village-
forests.

27. The Local Government may from time to time assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

The Local Government may from time to time make rules for regulating the management of village-forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce, or pasture, and their duties for the protection and improvement of such forest.

All provisions of this Act relating to reserved forests shall (so far as they are consistent with the rules so made) apply to village-forests

CHAPTER IV.

OF PROTECTED FORESTS.¹

“Protected
forests.”

28. The Local Government may from time to time, by notification in the local official Gazette, declare the provisions of this Chapter applicable to any forest-land or waste-land which is not included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

The forest-land and waste-lands comprised in any such notification shall be called a “protected forest.”

No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the Local Government thinks sufficient.

Every such record shall be presumed to be correct until the contrary is proved :

Provided that, if in the case of any forest-land or waste-land, the Local Government thinks that such inquiry and record are necessary, but that they

¹ As to the application of provisions relating to protected forests (1) to land not the property of the Government, *see* s. 38; (2) to forests, waste-land or produce the joint property of the Government and other persons, *see* s. 78, *infra*.

(Chapter IV.—Of Protected Forests. Secs. 29-31.)

will occupy such length of time as that the rights of Government will in the meantime be endangered, the Local Government may (pending such inquiry and record) declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

29. The Local Government may from time to time, by notification in the local official Gazette,—

- (a) declare any class of trees in a protected forest, or any trees in any such forest, to be reserved from a date fixed by such notification ;
- (b) declare that a portion of such forest be closed for such term, not exceeding twenty years, as the Local Government thinks fit, and that the rights of private persons (if any) over such portion shall be suspended during such term : Provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed ;
- (c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal, of any forest-produce, in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, any land in any such forest ; and
- (d) alter or cancel such declaration or prohibition.

Power to issue notification—
reserving trees,

closing forest,

prohibiting collection of forest-produce, etc.,

and breaking up or clearing of land.

30. The Collector or Deputy Commissioner of the district shall cause a translation into the language of the district, of every notification issued under section 29, to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

Publication of translation of such notification in neighbourhood.

31. The Local Government may from time to time make rules¹ to regulate the following matters :—

- (a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce, from protected forests ;
- (b) the granting of licenses to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licenses by such persons ;
- (c) the granting of licenses to persons felling or removing trees or timber

Power to make rules for protected forests.

¹ For rules under this section for (1) Bombay, see pp. 167, 171 and 174 of the Bombay List of Local Rules and Orders, Ed. 1896 ; (2) for protected forests of Naini Tal, Ranikhet and Lalitpur, see p. 62 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.

(Chapter IV.—Of Protected Forests. Sec. 32.)

or other forest-produce from such forests for the purposes of trade, and the production and return of such licenses by such persons ;

- (d) the payments¹(if any) to be made by the persons mentioned in clauses (b) and (c) of this section, for permission to cut such trees, or to collect and remove such timber or other forest-produce ;
- (e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payments shall be made.
- (f) the examination of forest-produce passing out of such forests ;
- (g) the clearing and breaking up of land for cultivation or other purposes in such forests ;
- (h) the protection from fire of timber lying in such forests and of trees reserved under section 29 ;
- (i) the cutting of grass and pasturing of cattle in such forests ;
- (j) ¹[killing or catching elephants,] hunting, shooting, fishing, poisoning water and setting traps or snares in such forests ;
- (k) the protection and management of any portion of a forest closed under section 29 ;
- (l) the exercise of rights referred to in section 28.

32. Any person who commits any of the following offences :—

- (a) fells, girdles, lops, taps or burns any tree reserved under section 29, or strips off the bark or leaves from, or otherwise damages, any such tree ;
- (b) contrary to any prohibition under section 29, quarries any stone, or burns any lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce ;
- (c) contrary to any prohibition under section 29, breaks up or clears for cultivation or any other purpose any land in any protected forest ;
- (d) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any trees reserved under section 29, whether standing, fallen or felled, or to any closed portion of such forest ;
- (e) leaves burning any fire kindled by him in the vicinity of any such trees or closed portion ;

Penalties for acts in contravention of notification under section 29.

¹ These words are repealed in the North-Western Provinces, Oudh, the Central Provinces and Coorg, and in local areas to which the Elephants' Preservation Act, 1870, is extended, *see* Act VI of 1870, s. 2, printed, *infra*, p. 257.

(Chapter IV.—Of Protected Forests. Sec. 33. Chapter V.—Forests under Conservancy-administration when this Act comes into force. Sec. 34.)

(f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid ;

(g) permits cattle to damage any such tree ;

(h) infringes any rule made under section 31 ;

shall be punished with imprisonment, for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

33. Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest-officer, or in accordance with rules made under section 31, or (except as regards any portion of a forest closed under section 29) in the exercise of any right recorded under section 28.

Nothing in this Chapter to prohibit acts done in certain cases.

CHAPTER V.

FORESTS UNDER CONSERVANCY-ADMINISTRATION WHEN THIS ACT COMES INTO FORCE.

34. Within twelve months from the date on which this Act comes into force in the territories administered by any Local Government, such Government shall, after consideration of the rights of the Government and private persons in all forest-lands or waste-lands then under its executive control for purposes of forest-conservancy, determine which of such lands (if any) can, according to justice, equity and good conscience, be classed as reserved forests or protected forests under this Act, and declare, by notification in the local official Gazette, any land so classed to be reserved or protected forests as the case may be :

Forests under conservancy administration when this Act comes into force.

Provided that such declaration shall not affect any rights of the Government or private persons to or over any land or forest-produce in any such forest, which have, previous to the date of such declaration, been inquired into, settled and recorded in a manner which the Local Government thinks sufficient :

Provided also that if any such rights have not on such date been so inquired into, settled and recorded, the Local Government shall direct that the same shall be inquired into, settled and recorded in the manner provided by this Act for reserved or protected forests, as the case may be ; and, until such inquiry, settlement and record have been completed, no such declaration shall abridge or affect such rights,

(Chapter VI.—Of the Control over Forests and Lands not being the Property of Government. Secs. 35-36.)

CHAPTER VI.

OF THE CONTROL OVER FORESTS AND LANDS NOT BEING THE PROPERTY OF GOVERNMENT.

Protection of forest for special purposes.

35. The Local Government may from time to time, by notification in the local official Gazette, regulate or prohibit in any forest or waste-land—

- (a) the breaking up or clearing of land for cultivation ;
- (b) the pasturing of cattle ;
- (c) the firing or clearing of the vegetation ;

when such regulation or prohibition appears necessary for any of the following purposes :—

First.—For protection against storms, winds, rolling stones, floods and avalanches ;

Second.—For the preservation of the soil on the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips and of the formation of ravines and torrents, and the protection of land against erosion, or the deposit thereon of sand, stones or gravel ;

Third.—For the maintenance of a water-supply in springs, rivers and tanks ;

Fourth.—For the protection of roads, bridges, railways and other lines of communication ;

Fifth.—For the preservation of the public health ; and may alter or cancel such notification.

The Local Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit :

Provided that no such notification shall be made or work begun until after the issue of a notice to the owner of such forest or land, calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed, and until his objections (if any) and any evidence he may produce in support of the same have been heard by an officer duly appointed in that behalf and have been considered by the Local Government.

Power to assume management of forests.

36. In case of neglect of, or wilful disobedience to, any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the Local Government may, after notice in writing to the owner of such forest or land, and after considering his objections (if any), place the same under the control of a Forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

(Chapter VI.—Of the Control over Forests and Lands not being the Property of Government. Secs. 37-38. Chapter VII.—Of the Duty on Timber and other Forest-produce. Sec. 39.)

The net profits (if any) arising from the management of such forest or land shall be paid to the said proprietor.

37. In any case under this Chapter in which the Local Government considers that, in lieu of placing the forest or land under the control of a Forest-officer, the same should be acquired for public purposes, the Local Government may proceed to acquire it in the manner prescribed by the Land Acquisition Act, 1870.¹

Expropriation of forests in certain cases.

The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the Local Government shall acquire such forest or land accordingly.

38. The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector or Deputy Commissioner their desire—

Protection of forests at request of owners.

(a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon ; or

(b) that all or any of the provisions of this Act be applied to such land.

In either case, the Local Government may, by notification in the local official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

Any such notification may be altered or cancelled by a like notification.

CHAPTER VII.

OF THE DUTY ON TIMBER AND OTHER FOREST-PRODUCE.²

39. The Local Government, with the previous sanction of the Governor General in Council, may levy a duty in such manner, at such places and at such rates as it may from time to time prescribe by notification in the local official Gazette on all timber ³[or other forest-produce]—

Power to impose duty on timber and other forest-produce.

(a) which is produced in British India, and in respect of which the Government has any right ;

¹ Read now the Land Acquisition Act, 1894 (I of 1894), s. 2.

² This heading was substituted for the original heading "of the duty on timber" by the Forest Act, 1890 (V of 1890), s. 8 (1), printed, General Acts, Vol. V.

³ These words were inserted by Act V of 1890, s. 8 (2).

(Chapter VII.—Of the Duty on Timber and other Forest-produce. Sec. 40.
Chapter VIII.—Of the Control of Timber and other Forest-produce in Transit. Sec. 41.)

(b) which is brought from any place beyond the frontier of British India.

Power to fix value for ad valorem duty.

In every case in which such duty is directed to be levied *ad valorem*, the Local Government may, with the like sanction, from time to time fix, by like notification, the value on which such duty shall be assessed.

All duties on timber ¹[or other forest-produce,] which, at the time when this Act comes into force in any territory, are levied therein under the authority of the Local Government, shall be deemed to be and to have been duly levied under the provisions of this Act.

Limit not to apply to purchase-money or royalty.

40. Nothing in this Chapter shall be deemed to limit the amount (if any) chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

CHAPTER VIII.

OF THE CONTROL OF TIMBER AND OTHER FOREST-PRODUCE IN TRANSIT.

Power to makes rules to regulate transit of forest produce.

41. The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the Local Government, and it may from time to time make rules to regulate the transit of all timber and other forest-produce.

³ Such rules may (among other matters)—

- (a) Prescribe the routes by which alone timber ⁴[or other] forest-produce may be imported, exported or moved, into, from or within, British India ;
- (b) prohibit the import and export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass ;
- (c) provide for the issue, production and return of such passes and for the payment of fees therefor ;

¹ These words were inserted by the Forest Act, 1890 (V of 1890), s. 8 (2), printed, General Acts, Vol. V.

² For rules made by the Government of Bengal to regulate the transit of timber on the Gandak river so far as it flows within the jurisdiction of that Government, see Calcutta Gazette, 1898, Pt. I, p. 141.

³ For rules made under this section for (1) Bombay, see list on p. lix of the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896 ; (2) the Central Provinces, see p. 25 of the Central Provinces List of Local Rules and Orders, Ed. 1896 ; (3) the North-Western Provinces, see p. 66 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.

⁴ These words were substituted for the original words "and other" by the Forest Act, 1890 (V of 1890), s. 8 (3).

(Chapter VIII.—Of the Control of Timber and other Forest-produce in Transit.
Sec. 41.)

- (d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or to which it is desirable for the purposes of this Act to affix a mark ;
- (e) provide for the establishment and regulation of dépôts to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it ; and the conditions under which such timber or other produce shall be brought to, stored at and removed from such dépôts ;¹
- (f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass, brushwood, branches and leaves into any such river, or any act which may cause such river to be closed or obstructed ;
- (g) provide for the prevention and removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same ;
- (h) prohibit absolutely or subject to conditions, within specified local limits the establishment of saw-pits, the converting, cutting, burning, concealing or marking of timber, the altering or effacing of any marks on the same, and the possession or carrying of marking hammers or other implements used for marking timber ;
- (i) regulate the use of property-marks for timber, and the registration of such marks ; prescribe the time for which such registration shall hold good ; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

²[The Local Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.]

¹“ Dépôts ” was substituted for “ dépôt ” by the Repealing and Amending Act, 1891 (XII of 1891).

² This paragraph was added by the Forest Act, 1890 (V of 1890), s. 8 (4), printed, General Acts, Vol. V.

(Chapter VIII.—Of the Control of Timber and other Forest-produce in Transit. Secs. 42-44. Chapter IX.—Of the Collection of Drift and Stranded Timber. Sec. 45.)

Penalty for breach of rules made under section 41.

42. The Local Government may by such rules prescribe as penalties for the infringement thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

Double penalties may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or if the offender has been previously convicted of a like offence.

Government and Forest-officers not liable for damage to forest-produce at depôt.

43. The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depôt established under a rule made under section 41, or while detained elsewhere for the purposes of this Act ; and no Forest-officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

All persons bound to aid in case of accident at depôt.

44. In case of any accident or emergency involving danger to any property at any such depôt, every person employed at such depôt, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger and securing such property from damage or loss.

CHAPTER IX.

OF THE COLLECTION OF DRIFT AND STRANDED TIMBER.

Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.

45. All timber found adrift, beached, stranded or sunk ;

all wood or timber bearing marks which have not been registered under section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise, and,

in such areas as the Local Government directs,¹ all unmarked wood and timber,

shall be deemed to be the property of Government unless and until any person establishes his right and title thereto, as provided in this Chapter.

Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section 51, and may be brought to such depôts as the Forest-officer may from time to time notify as depôts for the reception of drift-timber.

¹ For rules for (1) the Central Provinces under this section, see p. 30 of the Central Provinces List of Local Rules and Orders, Ed. 1896 ; (2) the North-Western Provinces and Oudh, see p. 66 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.

(Chapter IX.—Of the Collection of Drift and Stranded Timber. Secs. 46-49.)

The Local Government may, by notification in the local official Gazette, exempt any class of timber from the provisions of this section, and withdraw such exemption.

46. Public notice shall from time to time be given by the Forest-officer of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

Notice to claimants of drift-timber.

47. When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

Procedure on claim preferred to such timber.

If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the Civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal.

Any person whose claim has been rejected under this section may ¹[within three months] from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government, or against any Forest-officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

On rejection of claim to such timber, claimant may institute suit.

No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

48. If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section 46, or, on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 47, in such other person free from all encumbrances ²[not created by him].

Disposal of unclaimed timber.

49. The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no Forest-

Government and its officers not liable for damage to such timber.

¹ These words were substituted for the original words "within two months" by the Forest Act, 1890 (V of 1890), s. 9, printed, General Acts, Vol. V.

² These words were added by s. 10 of the same Act.

(Chapter IX.—Of the Collection of Drift and Stranded Timber. Secs. 50-51.
Chapter X.—Penalties and Procedure. Sec. 52.)

officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

Payments to be made by claimant before timber is delivered to him.

50. No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made in pursuance of section 51.

Power to make rules and prescribe penalties.

51. The Local Government may from time to time make rules¹ to regulate the following matters (namely):—

- (a) the salving, collection and disposal of all timber mentioned in section 45;
- (b) the use and registration of boats used in salving and collecting timber;
- (c) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber;
- (d) the use and registration of hammers and other instruments to be used for marking such timber.

The Local Government may from time to time prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER X.

PENALTIES AND PROCEDURE.

Seizure of property liable to confiscation.

52. When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts and cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

Application for confiscation.

Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and

¹ For rules under this section for (1) Bombay, see pp. 191 and 192 of the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896; (2) the Central Provinces, see p. 30 of the Central Provinces List of Local Rules and Orders, Ed. 1896; (3) the North-Western Provinces and Oudh, see p. 66 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.

(Chapter X.—Penalties and Procedure. Secs. 53-59.)

the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

53. Upon the receipt of any such report the Magistrate shall, with all convenient dispatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

Procedure thereupon.

54. All timber or forest-produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence, shall be liable to confiscation.

Forest-produce, tools, etc., when liable to confiscation.

Such confiscation may be in addition to any other punishment prescribed for such offence.

55. When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by a Forest-officer and in any other case may be disposed of in such manner as the Court may direct.

Disposal, on conclusion of trial for forest-offence, of produce in respect of which it was committed.

56. When the offender is not known, or cannot be found, the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest-officer, or to be made over to the person ¹[whom the Magistrate deems to be entitled to the same] :

Procedure when offender not known, or cannot be found.

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

57. The Magistrate may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

Procedure as to perishable property seized under section 52.

58. The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section 54, 55 or 56, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

Appeal from orders under sections 54, 55 and 56.

59. When an order for the confiscation of any property has been passed under section 54 or 56, as the case may be, and the period limited by

Property when to vest in Government.

¹These words were substituted for the original words "whom he deems to be entitled to the same" by the Forest Act, 1890 (V of 1890), s. 11, printed, General Acts, Vol. V.

(Chapter X.—Penalties and Procedure. Secs. 60-63.)

section 58 for an appeal from such order has elapsed and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all incumbrances.

Saving of
power to re-
lease pro-
perty seized.

60. Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Local Government from directing at any time the immediate release of any property seized under section 52.

Punishment
for wrongful
seizure.

61. Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Penalty for
counterfeit-
ing or defac-
ing marks
on trees and
timber and
for altering
boundary-
marks.

62. Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code¹—

(a) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person ; or

(b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest-officer ; or

(c) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied,

shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Power to
arrest
without
warrant.

63. Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

Every officer making an arrest under this section shall without unnecessary delay take or send the person arrested before the Magistrate having jurisdiction in the case ²[or to the officer in charge of the nearest police-station].

Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under Chapter IV of this Act, unless such act has been prohibited under section 29, clause (c).

¹ Printed, General Acts, Vol. I, Ed. 1898, p. 240.

² These words were added by the Forest Act, 1890 (V of 1890), s. 12, printed, General Acts, Vol. V.

64. Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

Power to prevent commission of offence.

65. The Magistrate of the district¹ and any Magistrate of the first class specially empowered in this behalf by the Local Government may try summarily, under the Code of Criminal Procedure,² any forest-offence punishable only with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

Power to try offences summarily.

66. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by the rules made under this Act:

Operation of other laws not barred.

Provided that no person shall be punished twice for the same offence.

³67. (1) The Local Government may from time to time, by notification in the official Gazette, empower a Forest-officer by name, or as holding an office,—

Power to compound offences.

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 61 or section 62, a sum of money by way of compensation for the offence which such person is suspected to have committed, and,

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest-officer shall not be empowered under this section unless he is a Forest-officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under sub-section (1), clause (a), shall in no case exceed the sum of fifty rupees.

68. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

Presumption that forest-produce belongs to Government.

¹ Now District Magistrate—see the Code of Criminal Procedure, 1898, (Act V of 1898), s. 3.

² See now Act V of 1898.

³ This section was substituted for the original s. 67 by the Forest Act, 1890 (V of 1890), s. 13, printed, General Acts, Vol. V.

(Chapter XI.—Cattle-trespass. Secs. 69-70. Chapter XII.—Of Forest-officers. Sec. 71.)

CHAPTER XI.

CATTLE-TRESPASS.

Cattle-trespass Act, 1871, to apply.

69. Cattle trespassing in a reserved forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of the 11th section of the Cattle-trespass Act, 1871,¹ and may be seized and impounded as such by any Forest-officer or Police-officer.

Power to alter fines fixed by that Act.

70. The Local Government may from time to time, by notification in the local official Gazette, direct that in lieu of the fines fixed by the 12th section of the Act last aforesaid, there shall be levied for each head of cattle impounded under section 69 of this Act such fines as it thinks fit, but not exceeding the following, that is to say :—

For each elephant	ten rupees.
For each buffalo or camel	two „
For each horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer	one rupee.
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid	eight annas.

CHAPTER XII.

OF FOREST-OFFICERS.

Local Government may invest Forest-officers with certain powers.

71. The Local Government may invest any Forest-officer by name, or as holding an office, with the following powers, that is to say :—

- (a) power to enter upon any land and to survey, demarcate and make a map of the same ;
- (b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents ;
- (c) power to issue a search-warrant under the Code of Criminal Procedure ;²
- (d) power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.

Any evidence recorded under clause (d) of this section shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

¹ Printed, General Acts, Vol. II, p. 183.

² Read now the Code of Criminal Procedure, 1898 (Act V of 1898).

(Chapter XII.—Of Forest-officers. Secs. 72-74. Chapter XIII.—Subsidiary Rules. Secs. 75-77.)

72. All Forest-officers shall be deemed to be public servants within the XLV of 1860, meaning of the Indian Penal Code.¹

Forest-officers deemed public servants.

73. No suit shall lie against any public servant for anything done by him in good faith under this Act.

Indemnity for acts done in good faith.

74. Except with the permission in writing of the Local Government, no Forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in British or Foreign territory.

Forest-officers not to trade.

CHAPTER XIII.

SUBSIDIARY RULES.

75. The Local Government may from time to time make rules² : —

Additional powers to make rules.

- (a) to prescribe and limit the powers and duties of any Forest-officer under this Act ;
- (b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act ;
- (c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons ; and,
- (d) generally, to carry out the provisions of this Act.

76. Any person breaking any rule under this Act, for the breach of which no special penalty is provided, shall be punished with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

Penalties for breach of rules.

77. All rules made by the Local Government under this Act shall be published in the local official Gazette, and shall thereupon, so far as they are consistent with this Act, have the force of law :

Rules when to have force of law.

Provided that no rule made under section 27, 31 or 41 shall be so published without the previous sanction of the Governor General in Council.

¹ Printed, General Acts, Vol. I, Ed. 1898, p. 240.

² For rules made under this section for (1) Bombay, see pp. 195 to 200 of the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896 ; (2) the Central Provinces, see pp. 31 to 34 of the Central Provinces List of Local Rules and Orders, Ed. 1896 ; (3) the North-Western Provinces and Oudh, see pp. 68 to 70 of the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894.

CHAPTER XIV.

MISCELLANEOUS.

Persons
bound to as-
sist Forest-
officers and
Police-offi-
cers.

78. Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and

every person who is employed by any such person in such forest, and

every person in any village contiguous to such forest who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community,

shall be bound to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information he may possess respecting the commission of, or intention to-commit, any forest-offence, and shall assist any Forest-officer or Police-officer demanding his aid—

(a) in extinguishing any fire occurring in such forest ;

(b) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest ;

(c) in preventing the commission in such forest of any forest-offence ; and,

(d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

Management
of forests
the joint pro-
perty of Gov-
ernment and
other persons.

79. If the Government and any person be jointly interested in any forest or waste-land, or in the whole or any part of the produce thereof, the Local Government may from time to time either—

(a) undertake the management of such forest, waste-land or produce, accounting to such person for his interest in the same ; or

(b) issue such regulations for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

When the Local Government undertakes, under clause (a) of this section, the management of any forest, waste-land or produce, it may from time to time, by notification in the local official Gazette, declare that any of the provisions contained in Chapters II and IV of this Act shall apply to such forest, waste-land or produce, and thereupon such provisions shall apply accordingly.

Failure to
perform
service for
which a
share in
produce of
Government

80. If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights, or to any part of the forest-produce of which the Government is entitled, upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact

(Chapter XIV.—Miscellaneous. Secs. 81-84.)

being established to the satisfaction of the Local Government that such service forest is is no longer so performed : enjoyed.

Provided that no such share shall be confiscated until the person entitled thereto, and the evidence (if any) which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the Local Government.

81. All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue. Recovery of money due to Government.

82. When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer until such amount has been paid. Lien on forest-produce for such money.

If such amount is not paid when due, the Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount. Power to sell such produce.

The surplus (if any), if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Her Majesty.

83. Whenever it appears to the Local Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of the Land Acquisition Act, 1870,¹ section 4. Land required under this Act to be deemed to be needed for a public purpose under Land Acquisition Act, 1894.

²[84. When any person, in compliance with any rule under this Act, binds himself by any instrument to perform any duty or act, or covenants by any instrument that he, or that he and his servants and agents, will abstain from any act, the whole sum mentioned in such instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872,³ be recovered from him in case of such breach as if it were an arrear of land-revenue.] Recovery of penalties due under bond.

1X of 1872.

¹ Read now the Land Acquisition Act, 1894 (I of 1894), see s. 2 of the Act.

² S. 84 was added by the Forest Act, 1890 (V of 1890), s. 14, printed, General Acts, Vol. V.

³ Printed, General Acts, Vol. II, p. 299.

SCHEDULE.

(See section 1.)

ENACTMENTS REPEALED.

Number and year of Act or Regulation.	Title.	Extent of repeal.
Act VII of 1865	An Act to give effect to rules for the management and preservation of Government forests.	So much as has not been repealed.
Act VII of 1869	An Act to give validity to certain rules relating to forests in British Burma.	The whole.
Act XIII of 1873	An Act to amend the law relating to timber floated down the rivers of British Burma.	So much as has not been repealed.
Regulation IX of 1874.	The Arakan Hill District Laws Regulation, 1874.	So far as it relates to Acts VII of 1865 and VII of 1869.

THE SEA CUSTOMS ACT, 1878.

CONTENTS.

CHAPTER I.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. Repeal of enactments
References to enactments repealed.
Saving of appointments, etc.
3. Interpretation.
4. Agent of owner of goods to be deemed owner for certain purposes.
5. When ship's agent may act for master.

CHAPTER II.

APPOINTMENT AND POWERS OF OFFICERS, ETC.

SECTIONS.

6. Appointment of Customs-officers.
Suspension and dismissal of such officers.
 7. Delegation of powers under section 6.
Suspension and dismissal of subordinate officers.
 8. Performance of duties of Customs-collector, where no Custom-house.
 9. Power to make rules.
 10. Customs-officers exempted from service on jury or inquest or as assessors.
-

CHAPTER III.

APPOINTMENT OF PORTS, WHARVES, CUSTOM-HOUSES, WAREHOUSES AND BOARDING AND LANDING-STATIONS.

11. Power to appoint ports, wharves and custom-houses.
 12. Power to declare places to be ports for coasting-trade.
 13. Power to declare that foreign ports shall be regarded as customs-ports for certain purposes.
 14. Power to declare warehousing ports.
 15. Power to appoint public warehouses.
 16. Power to license private warehouses.
Form of application for license.
Revocation of license.
 17. Stations for Customs-officers to board and land.
-

CHAPTER IV.

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION.

18. Prohibitions.
 19. Power to prohibit or restrict importation or exportation of goods.
 - 19A. Detention and confiscation of goods whose importation is prohibited.
-

CHAPTER V.

LEVY OF, AND EXEMPTION FROM, CUSTOMS-DUTIES.

20. Goods dutiable.
Proviso.
21. Goods partially composed of dutiable articles.
22. Power to fix tariff-values.
23. General power to exempt from customs-duties.
Power to authorize, in special cases, exemption from duty.

SECTIONS.

24. Baggage in actual use.
 25. Re-imported articles of country-produce.
Proviso.
 26. Excise-duty on importation of certain country-goods.
 27. Goods derelict and wreck.
 28. Country-provisions and stores may be shipped free of duty.
 29. Owner to declare real value, etc., of goods in bill-of-entry or shipping-bill.
Power to require production of invoice, etc.
 30. "Real value" defined.
 31. Examination of *ad valorem* goods.
 32. Procedure where such goods are under-valued by owner.
 33. Abatement allowed on damaged goods.
Reduced duty how determined.
 34. Deterioration of tariff-value goods.
 35. No abatement when duty is levied on quantity.
 36. Restriction on amendment of bill-of-entry or shipping-bill.
 37. Alteration of import-duty or tariff-valuation.
 38. Alteration of export-duty or tariff-valuation.
 39. Payment of duties short-levied or erroneously refunded.
 40. No refund of charges erroneously levied or paid, unless claimed within three months.
 41. Power to give credit for, and keep account-current of, duties and charges.
-

CHAPTER VI.

DRAWBACK.

42. Drawback allowable on re-export.
Conditions for grant of drawback.
43. Drawback on goods exported to customs-port and thence to foreign port.
Proviso.
44. Drawback of duties on wine and spirit allowed for officers of Navy.
45. Persons entering such wine or spirit for drawback to declare name and rank of officer claiming same.
46. Transfer of wine or spirit from one Naval officer to another.
47. Provisions and stores for Her Majesty's Navy.
48. Indian Marine and Marine-survey.
49. (a) Power to declare what goods are identifiable,
(b) and to prohibit drawback in case of specified foreign port.
50. When no drawback allowed.
51. Time to claim drawback.
When payment made.
52. Declaration by parties claiming drawback.

CHAPTER VII.

ARRIVAL AND DEPARTURE OF VESSELS.

Arrival and Entry of Vessels inwards.

SECTIONS.

53. Power to fix places beyond which inward-bound vessels are not to proceed until manifest delivered.
Delivery of manifest when vessel anchors below place so fixed.
54. Delivery of manifest where no place has been so fixed.
55. Signature and contents of manifest.
Amendment of errors in manifest.
56. Duty of person receiving manifest.
57. Bulk not to be broken until manifest, etc., delivered, and vessel entered inwards.
58. Master, if required, to deliver bill of lading, etc., to Customs-collector and answer questions.
59. Special pass for breaking bulk.
60. Manifest, etc., may be delivered by ship's agent.

Entry outwards, Port-clearance and Departure of Vessels.

61. Order for entry outwards to be obtained before export-cargo is shipped.
62. No vessel to depart without port-clearance.
No pilot to take charge of vessel proceeding to sea without production of port-clearance.
63. Application for port-clearance.
Master on applying for port-clearance to deliver documents and answer questions.
64. Power to refuse port-clearance.
65. Grant of port-clearance.
66. Grant of port-clearance on security of ship's agent.

CHAPTER VIII.

GENERAL PROVISIONS AFFECTING VESSELS IN PORT.

67. Power to depute Customs-officer to board ships.
Duty of such officer.
68. Officer and servant to be received.
Accommodation of officer and servant.
69. Officers of Customs to have free access to every part of ship, and may seal and secure goods.
Power to authorize search and opening of locks.
70. Goods not to be shipped, discharged or water-borne except in presence of officer.
71. Period allowed for discharge and shipment of cargo.
Consequence of exceeding same.
Allowance for period during which vessel is laid up.
72. Goods not to be landed, etc., on Sundays or holidays, without permission, nor except within fixed hours.
73. Goods not to be shipped, etc., except at wharves.

SECTIONS.

74. Power to exempt from sections 70 and 73.
 75. Power to make rules regarding baggage and mails.
Landing-fees.
 76. Boat-note.
 77. Goods water-borne to be forthwith landed or shipped.
 78. Such goods not to be transhipped without permission.
 79. Power to prohibit plying of unlicensed cargo-boats.
Issue of licenses and registration of cargo-boats.
 80. Power to require goods to be weighed or measured on board before
landing or after shipment.
-

CHAPTER IX.

OF DISCHARGE OF CARGO AND ENTRY INWARDS OF GOODS.

81. Discharge of cargo may commence on receipt of due permission.
 82. Goods not to leave ship unless entered in manifest.
 83. Procedure in respect of goods not landed within time allowed.
 84. Power to land small parcels.
Notice regarding unclaimed packages.
 85. Power to permit immediate discharge.
 86. Entry for home-consumption or warehousing.
 87. Assessment of dutiable goods.
 88. Procedure in case of goods not cleared or warehoused within four
months after entry of vessel.
Power to direct sale of perishable goods.
Proviso.
-

CHAPTER X.

OF CLEARANCE OF GOODS FOR HOME-CONSUMPTION.

89. Clearance for home-consumption.
-

CHAPTER XI.

WAREHOUSING.

Of the Admission of Goods into a Warehouse.

90. Application to warehouse.
91. Form of application.
92. Warehousing bond.
Form of bond.
93. Forwarding of goods to warehouse.

SECTIONS.

- 94. Receipt of goods at warehouse.
- 95. Goods how warehoused.
- 96. Warrant to be given when goods are warehoused.
Form of warrant.

Rules relating to Goods in a Warehouse.

- 97. Access of Customs-officer to private warehouse.
- 98. Power to cause packages lodged in warehouse to be opened and examined.
- 99. Access of owners to warehoused goods.
- 100. Owner's power to deal with warehoused goods.
- 101. Payment of rent and warehouse-dues.
- 102. Goods not to be taken out of warehouse, except as provided by this Act.
- 103. Period for which goods may remain warehoused under bond.
Goods in private warehouse on cancellation of license.

Of the Removal of Goods from one Warehouse to Another.

- 104. Power to remove goods from one warehouse to another in same port.
- 105. Power to remove goods from one port to another.
Procedure.
- 106. Transmission of account of goods to officers at port of destination.
Bond for due arrival and re-warehousing.
- 107. Remover may enter into a general bond.
- 108. Goods on arrival at port of destination to be subject to same laws as goods on first importation.
- 109. Bond under section 92 to continue in force notwithstanding removal.

Clearance for Home-consumption or Shipment.

- 110. Clearance of bonded goods for home-consumption.
- 111. Clearance of same for shipment to foreign port.
- 112. Clearance of same for shipment as provisions, etc., on vessel proceeding to foreign ports.
- 113. Form of application for clearance of goods.
Application when to be made.
- 114. Re-assessment of warehoused goods when damaged.
- 115. Re-assessment on alteration of duty or tariff-valuation.
- 116. Allowance in case of wine, spirit, beer or salt.
- 117. Further special allowance.

Of the Forfeiture and Discharge of the Bond.

- 118. If goods are improperly removed from warehouses or allowed to remain beyond time fixed,
or lost or destroyed,
or taken as samples,
Collector may demand duty, etc.

SECTIONS.

- 119. Procedure on failure to pay duty, etc.
- 120. Noting removal of goods.
- 121. Register of bonds.
Cancellation and return of bonds.

Miscellaneous.

- 122. Power to remit duties on warehoused goods lost or destroyed.
- 123. Responsibility of warehouse-keeper.
Compensation for loss or injury.
- 124. Public warehouse to be locked.
- 125. Power to decide where goods may be deposited in public warehouse, and on what terms.
- 126. Expenses of carriage, packing, etc., to be borne by owners.
- 127. Bengal Bonded Warehouse Association.

CHAPTER XII.

TRANSHIPMENT.

- 128. Power to permit transhipment without payment of duty.
- 129. Superintendence of transhipment.
- 130. Subsidiary rules as to transhipment.
- 131. Entry and warehousing, on arrival, of goods transhipped under section 128, clause 2.
- 132. Transhipment of provisions and stores from one vessel to another of same owner without payment of duty.
- 133. Levy of transhipment-fee.
- 134. Power to prohibit transhipment.
- 135. No goods to be transhipped except as provided.

CHAPTER XIII.

EXPORTATION OR SHIPMENT AND RE-LANDING.

- 136. No goods to be shipped, etc., till entry outwards of vessel.
- 137. Clearance for shipment.
- 138. Bond required in certain cases before exportation.
- 139. Additional charge on goods cleared for shipment after port-clearance granted.
- 140. Notice of non-shipment or re-landing, and return of duty thereon.
- 141. Goods re-landed or transhipped from a vessel returning to port, or putting into another port.
- 142. Vessel returning to port may enter and land goods under import-rules.
- 143. Landing of cargo during repairs.

CHAPTER XIV.

SPIRIT.

Exportation of Spirit under Bond for Excise-duty.

SECTIONS.

- 144. Rules for removal of spirit from distillery without payment of duty for exportation.
- 145. Spirit for export to be taken direct from distillery to custom-house under pass.
- 146. Gauging and proving of spirit.
- 147. Duty to be recovered on any deficiency in spirit under bond.
- 148. Duty on spirit exported under bond from one Indian port to another.
- 149. Removal for local consumption of spirit intended for exportation.

Drawback of Excise-duty on Export of Spirit.

- 150. Drawback of excise-duty on spirit exported.

Miscellaneous.

- 151. Differential duty to be levied in certain cases.
- 152. Rum-shrub, etc., how charged with duty.
Provisions respecting spirit applied to such liquors.
- 153. Conditions of drawback and remission of duty on spirit.
- 154. Re-land of spirit shipped.
- 155. Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption.
Decision where no rules, or their applicability disputed.

CHAPTER XV.

COASTING-TRADE.

- 156. Chapters VII, IX, X and part of XIII inapplicable to coasting-trade.
- 157. Power to regulate coasting-trade.
- 158. Coasting-vessels to deliver manifest and obtain port-clearance before leaving port of lading.
- 159. Delivery of manifest, etc., on arrival.
- 160. Departure from intermediate port.
- 161. Power to require bond before port-clearance is granted.
- 162. Discharge of cargo.
- 163. Goods on coasting-vessel, if excisable, not to be unladen without permission.
- 164. Grant and revocation of general pass.
- 165. Rules respecting cargo-books to be kept by masters of coasting-vessels.
- 166. Power to board and examine coasting-vessels.

CHAPTER XVI.

OFFENCES AND PENALTIES.

SECTIONS.

167. Punishments for offences :—

1. For infringing rules made under Act.
2. For landing or shipping goods at unauthorized port, etc.
3. For shipping, landing, concealing, etc., contrary to Act.
For being on board vessel on which offence is committed under No. 4.
4. For vessel which has been in port with a cargo, afterwards being found in ballast and cargo unaccounted for.
5. For masters of tug-steamers or pilot-vessels receiving or discharging any goods without due authority from sea-going vessel.
6. For not bringing-to at boarding-station.
7. For vessel removing from place of mooring, or unloading, without due authority.
For vessel not being moored in accordance with directions under section 17.
8. For goods being imported or exported contrary to prohibition.
9. For unauthorized declaration as to value of goods.
10. For not exporting or re-landing drawback goods.
11. For unauthorized lading or unloading of wine, spirit, etc.
12. For entering goods for drawback, which are less in value than the amount of drawback claimed.
13. For proceeding inward beyond fixed place before delivery of manifest.
14. For wilfully omitting to deliver manifest when vessel anchors below reporting-station.
15. For like omission when reporting-station has not been fixed.
16. For master delivering unsigned or untrue manifest.
17. For not being able to account for missing goods or deficiency of goods.
18. For refusing to receive or countersign manifest.
19. For breaking bulk without permission.
20. For false entry or fraudulent alteration, in bill-of-lading ;
for not making bill before leaving place where goods shipped ;
for cargo being stored, destroyed or thrown overboard and not satisfactorily accounted for.
21. For attempting to depart without port-clearance.
22. For departing without port-clearance.
23. For pilot taking charge of vessel without port-clearance.
24. For refusing to receive officer of Customs on board. .
25. For disobeying section 63.
26. For masters resisting search, removing marks, etc., placed by Customs-officer, secretly conveying away goods, or opening hatchway after fastened by Customs-officer.

SECTIONS.

167. Punishments for offences—*continued*.

27. For lading in absence of Customs-officer.
28. For removing goods contrary to section 70, 72 or 75.
29. For sending goods without, or in excess of, boat-note.
30. For non-receipt or non-delivery or non-signing of boat-note.
31. For not landing or shipping goods in accordance with section 73, 77 or 78.
32. For goods being found in unlicensed cargo-boats.
33. For discharging goods not duly entered in manifest.
34. For goods being found concealed and unaccounted for.
35. For goods found not agreeing in description and quantity with entry in manifest.
36. For removing goods after landing and before due entry.
37. For goods being brought to be passed through custom-house when packages differ from description given, contents are misdescribed or mis-stated, or other goods are concealed amongst them.
38. For misdescription of goods.
39. For taking or passing goods without entry.
40. Prohibited or dutiable goods concealed in baggage.
41. For improper carrying into warehouse.
42. For withholding or removing, before examination, goods entered to be warehoused.
43. For warehousing goods improperly.
44. For refusing to open private warehouse when duly required.
45. For neglecting to stow goods properly in warehouse.
46. For importer or owner of warehoused goods clandestinely gaining access.
47. For opening or altering warehoused goods.
48. For deficiencies in contravention of section 98 or 100 of goods in a private warehouse.
49. For failing to produce goods when required.
50. For concealing, removing, abstracting or transferring from one package to another goods duly warehoused.
51. For excess, in private warehouse, over registered quantity.
52. For removing warehoused goods improperly.
53. For taking goods out of warehouse without paying duty.
54. For infringing rules or orders regarding transhipment.
55. For shipping goods before entry outwards.
56. For shipping goods not in shipping-bill.
57. For not giving notice of short shipping or re-landing as required by section 140.
58. For landing at place other than that for which goods have been cleared.
59. For deficiency in goods on which drawback has been paid, on board vessel referred to in section 142.
60. For irregularly re-landing spirituous liquors.
61. For contravening rules relating to spirit.

SECTIONS.

167. Punishments for offences—*concluded*.

- 62. For contravention of rules made under section 157.
 - 63. For, contrary to such rules, touching at foreign port or not declaring in writing that vessel touched at foreign port.
 - 64. For non-compliance with section 158, 159 or 160.
 - 65. For failure to produce certificate.
 - 66. For master of coasting-vessel violating any conditions of general pass.
 - 67. For contravention of the provisions of section 165.
 - 68. For dutiable goods entered in cargo-book not being found, or for not entering.
 - 69. For failure to keep cargo-book correctly, etc.
 - 70. For breach in respect of lading, carrying coastwise and unloading.
 - 71. For refusal to produce documents.
 - 72. For making false declaration, destroying or refusing to produce document, or refusing to answer questions.
 - 73. For possession of smuggled goods.
 - 74. For searching persons on insufficient grounds.
 - 75. For Customs-officers guilty of breach of duty.
 - 76. For Customs-officers committing or conniving at frauds against customs-revenue.
 - 77. For neglect of Police-officer to give notice.
 - 78. For obstruction to Customs-officers.
 - 79. For Customs-officer disclosing particulars learnt officially concerning goods, or showing or parting with samples.
 - 80. For acting as agent without authority.
168. Packages and contents included in confiscation of goods.
Also conveyance and animals used in removal.
Tackle, etc., included in confiscation of vessels.

CHAPTER XVII.

PROCEDURE RELATING TO OFFENCES, APPEALS, ETC.

- 169. Power to search on reasonable suspicion.
- 170. Persons may, before search, require to be taken before Magistrate or Customs-collector.
- 171. Power to stop vessels, carts, etc., and search for goods on reasonable suspicion.
- 172. Power to issue search-warrants.
- 173. Persons reasonably suspected may be arrested.
- 174. Persons arrested to be taken to nearest Magistrate or Customs-collector.
- 175. Persons taken before Magistrate may be detained or admitted to bail.
- 176. Person escaping may be afterwards arrested.
- 177. Persons in Her Majesty's Navy, when arrested, to be secured on board until warrant procured.
- 178. Seizure of things liable to confiscation.
- 179. Things seized how dealt with.

SECTIONS.

180. Procedure in respect of things seized on suspicion.
181. When seizure or arrest is made, reason in writing to be given.
182. Adjudication of confiscations and penalties.
183. Option to pay fine in lieu of confiscation.
184. On confiscation, property to vest in Her Majesty.
185. Levy of penalty for failure to bring-to.
186. Penalty under Act not to interfere with punishment under other law.
187. Offences not specially provided for how tried.
188. Appeal from subordinate to Chief Customs-Authority.
189. Deposit, pending appeal, of duty demanded.
190. Power to remit penalty or confiscation.
191. Revision by Local Government.
192. Goods on which penalty incurred not to be removed till payment.
Other goods of person liable to fine or penalty may be detained.
193. Enforcement of payment of penalty.

CHAPTER XVIII.

MISCELLANEOUS.

194. Power to open packages and examine goods.
195. Power to take samples of goods.
196. Owner to pay expense incidental to compliance with Customs-law.
197. No compensation for loss or injury except on proof of neglect or wilful act.
198. Notice of proceedings.
Limitation.
199. Wharfage-fees.
200. Duplicates of documents may be granted on payment of fee.
201. Amendment of documents.
202. Custom-house agents.
203. Agent to produce authority if required.
204. Rules to be notified.
205. Cancellation of notifications.
206. Remission of duty and compensation to owner in certain cases.
207. Saving of Calcutta Port Commissioners' and Bombay Port Trust Acts.

SCHEDULE.

PART I.—ACTS REPEALED.

PART II.—FORMS—

- A.—Form of Bond for Import-duty.
- B.—Form of Bonded Warehouse-warrant.
- C.—Form of Bond for the Removal of Spirit from a Licensed Distillery.

ACT No. VIII of 1878.¹

[8th March, 1878.]

An Act to consolidate and amend the law relating to the levy of Sea Customs-duties.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the levy of sea customs-duties ; It is enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Sea Customs Act, 1878.

Local extent.

It extends to the whole of British India, and shall come into force on the first day of April, 1878.

Commencement.
Repeal of enactments.

2. The Acts mentioned in ²[Part I of the Schedule] hereto annexed are repealed to the extent specified therein.

References to enactments repealed.

All references to any of the said Acts, in Acts passed subsequently thereto, shall be read as if made to the corresponding provisions of this Act.

Saving of appointments, etc.

All appointments, rules, declarations, exemptions and delegations made, powers conferred, forms and conditions prescribed, values, fees, rates and periods fixed, and notifications, instructions, directions, prohibitions, passes and licenses issued, under any Act hereby repealed shall, if the same are in force at the time this Act comes into force, be deemed to have been respectively made, conferred, prescribed, fixed and issued under this Act, in so far as they are consistent herewith.

Interpretation.

3. In this Act, unless there be something repugnant in the subject or context,—

“ Chief Customs-authority.”

(a) “ Chief Customs-authority ” denotes the person authorized³ to exercise

¹ For the Statement of Objects and Reasons, see Gazette of India, 1876, Pt. V, p. 1402 ; for the Report of the Select Committee, see *ibid.*, 1877, Pt. V, p. 491 ; for discussions in Council, see *ibid.*, 1876, Supplement, p. 1289 ; *ibid.*, 1877, Supplement, p. 2770 ; *ibid.*, 1878, Supplement, p. 448.

The Act [s. 144 to s. 154] has been declared to be in force in Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), s. 3.

As to the application of the Act in the case of Cotton Duties, see the Cotton Duties Act, 1896 (II of 1896).

The Inland Bonded Warehouses Act, 1896 (VIII of 1896) which repealed the Inland Bonded Warehouses Act, 1887 (XXI of 1887), is to be read with and taken as part of this Act, see s. 1 (2).

² These words were substituted for the words “ the first schedule,” by the Repealing and Amending Act, 1891 (XII of 1891).

³ For notification appointing the Financial Commissioner to be the Chief Customs-authority in and for Burma, see Notification No. 18, Burma Gazette, 1889, Pt. I, p. 179.

subject to the Local Government, the chief control in matters relating to Sea-customs in any place in which this Act operates :

- (b) " Chief Customs-officer " denotes the Chief Executive Officer of Sea-
customs for any Port to which this Act applies : " Chief Customs-officer."
- (c) " Customs-collector " includes every officer of Customs for the time
being in separate charge of a Custom-house, or duly authorized to
perform all, or any special, duties of an officer so in charge : " Customs-collector."
- (d) " Customs-port " means any place except Aden declared under section
11 to be a Port for the shipment and landing of goods : " Customs-port."
- (e) " Foreign Port " means Aden and any place beyond the limits of
British India : ¹ " Foreign port."
- (f) " Vessel " ² includes anything made for the conveyance by water of
human beings or property : " Vessel."
- (g) " Coasting-vessel " denotes any vessel proceeding from one Customs-
port to another Customs-port, whether touching at any intermediate
Foreign Port or not, or proceeding from or to a Customs-port to or
from a place declared to be a Port under section 12 : " Coasting-vessel."
- (h) " Master," when used in relation to any vessel, means any person, ex-
cept a pilot or harbour-master, having command or charge of such
vessel : " Master."
- (i) " Warehousing port " means any Customs-port declared under section
14 to be a warehousing port : " Warehousing port."
- (j) " Warehouse " denotes any place appointed or licensed under section
15 or section 16. " Warehouse."

4. When any person is expressly or impliedly authorized by the owner of any goods to be his agent in respect of such goods for all or any of the purposes of this Act, and such authorization is approved by the Customs-collector, such person shall, for such purposes, be deemed to be the owner of such goods. Agent of owner of goods to be deemed owner for certain purposes.

5. Anything which a master is required or empowered to do under this Act may, with the express or implied consent of such master and the approval of the Customs-collector, be done by a ship's agent. When ship's agent may act for master.

¹ For order declaring the ports of the Native States of Cochin and Travancore to be British Indian ports for the purposes of the Act, *see* Notification No. 1131, Gazette of India, 1865, p. 780.

For order declaring the ports of His Highness the Gaikwar, the Thakore of Bhownagar and the Nawab of Cambay to be British Indian ports for the purposes of the Act, *see* Notification No. 1180, Gazette of India, 1866, p. 908.

² *Cf.* definition in s. 3 (56) of the General Clauses Act, 1897 (X of 1897).

³ *Cf.* definition in s. 3 (32) of the General Clauses Act, 1897 (X of 1897).

CHAPTER II.

APPOINTMENT AND POWERS OF OFFICERS, ETC.

Appointment
of Customs-
officers.

6. The Local Government of every place in which duties of Sea-customs are leviable may appoint¹ such persons as it thinks fit to be officers of customs, and to exercise the powers conferred, and to perform the duties imposed, by this Act on such officers.

Suspension
and dismissal
of such
officers.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Delegation
of powers
under section 6.

7. The Local Government may delegate² to any officer of customs any of the powers vested in it by the first clause of section 6.

Suspension
and dismissal
of subordinate
officers.
Performance
of duties of
Customs-collector,
where
no Custom-
house.

Every person appointed in exercise of such delegated power may be suspended or dismissed by the officer who appointed him.

8. At any place for which there is no custom-house, the Collector of the district and the officers subordinate to him shall, unless the Local Government otherwise directs, perform all duties imposed by this Act on a Customs-collector and other officers of Customs.

Power to
make rules.

9. The Chief Customs-authority may from time to time, with the sanction of the Local Government, make rules consistent with this Act³—

- (a) prescribing and limiting the powers and duties of officers of Customs ;
- (b) regulating the delegation of their duties by such officers ; and
- (c) generally to carry out the provisions of this Act.

Customs-
officers ex-
empted from
service on
jury or
inquest or
as assessors.

10. No Chief Customs-authority or Chief Customs-officer, and no other officer of customs whom such Chief authority or Chief Officer deems it necessary to exempt on grounds of public duty, shall be compelled to serve on any jury or inquest, or as an assessor.

¹ For notifications issued under the powers conferred by section 6 in—

Bombay . . . see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. lxi and lxii ;

Burma . . . see Burma Laws List, Ed. 1897, p. 81 ;

Madras . . . see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 112.

² For notifications issued under the powers conferred by section 7 in—

Bombay . . . see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. lxi and lxii ;

Madras . . . see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 112.

³ For rules made under the powers conferred by this Act in—

Bombay . . . see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. lxii and lxiii ;

Burma . . . see Burma Laws List, Ed. 1897, p. 81 ;

Madras . . . see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 112.

For rules made for Burma under section 9, to regulate the payment of rewards to person contributing to the detection of offences under the Act, see Burma Gazette, 1898, Pt. IV, p. 381.

(Chapter III.—Appointment of Ports, Wharves, Custom-houses, Warehouses and Boarding and Landing-stations. Secs. 11-14.)

CHAPTER III.

APPOINTMENT OF PORTS, WHARVES, CUSTOM-HOUSES, WAREHOUSES AND BOARDING AND LANDING-STATIONS.

11. The Local Government may from time to time, by notification in the official Gazette,¹—

Power to appoint ports, wharves and custom-houses.

- (a) declare the places within the territories administered by it which alone shall be ports for the shipment and landing of goods ;
- (b) declare the limits of such ports ;
- (c) appoint proper places therein to be wharves for the landing and shipping of goods, or of particular classes of goods ;
- (d) declare the limits of any such wharf ; and
- (e) alter the name of any such port or wharf ; and
- (f) declare what shall, for the purposes of this Act, be deemed to be a custom-house, and the limits thereof.

12. The Local Government may also from time to time in like manner declare places ² to be ports for the carrying on of coasting-trade with customs-ports, or with any specified customs-port, and for no other purpose.

Power to declare places to be ports for coasting-trade.

13. The Governor General in Council may from time to time direct, by notification ³ in the Gazette of India, that all goods or any specified class of goods imported from or exported to any foreign port to or from a customs-port shall, with such limitations and on such conditions (if any) as he thinks fit, be treated for any of the purposes of this Act as goods imported from or exported to a customs-port, as the case may be.

Power to declare that foreign ports shall be regarded as customs-ports for certain purposes.

14. The Local Government may from time to time declare, by notification in the official Gazette, that any customs-port shall be a warehousing port ⁴ for the purposes of this Act.

Power to declare warehousing ports.

¹ For notification issued under the powers conferred by this Act in—

Bombay . . . see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. lxi to lxxi;
 Burma . . . see Burma Laws List, Ed. 1897, p. 83 ;
 Madras . . . see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 112 to 115.

² For instances of notifications issued under the powers conferred by this section in—

Bombay . . . see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. lxxi ;
 Burma . . . see Burma Laws List, Ed. 1897, p. 83.

³ For instances of such orders, see Notifications No. 2559, Gazette of India, 1884, Pt. I, p. 282 ; and No. 358, *ibid*, 1885, Pt. I, p. 142.

⁴ For notifications issued under the powers conferred by this section in—

Bombay . . . see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. lxxi ;
 Burma . . . see Burma Laws List, Ed. 1897, p. 83 ;
 Madras . . . see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 115.

(Chapter III.—Appointment of Ports, Wharves, Custom-houses, Warehouses and Boarding and Landing-stations. Secs. 15-17. Chapter IV.—Prohibitions and Restrictions of Importation and Exportation. Sec. 18.)

Power to
appoint
public ware-
houses.

15. At any warehousing port,¹ the Chief Customs-authority may from time to time appoint public warehouses² wherein dutiable goods may be deposited without payment of duty on the first importation thereof, and may cancel such appointment.

Power to
license pri-
vate ware-
houses.

16. At any warehousing port¹ the Chief Customs-officer may from time to time license private warehouses³ wherein dutiable goods may be deposited as aforesaid.

Form of
application
for license.

Every application for a license for a private warehouse shall be in writing and shall be drawn up in such form as is from time to time prescribed by the Chief Customs-authority, and shall be signed by the applicant.

Revocation
of license.

Every license granted under this section may be cancelled on conviction of the licensee of any offence under this Act relating to warehouses, unless it is otherwise provided in the license, or on the expiration of one month's notice in writing given to the licensee by the Chief Customs-officer.

Stations for
Customs-
officers to
board and
land.

17. The Chief Customs-authority may from time to time appoint, in or near any Customs-port, stations or limits at or within which vessels arriving at, or departing from, such port shall bring-to for the boarding or landing of officers of customs, and may, unless separate provision therefor has been made under the Indian Ports Act, 1875,⁴ direct at what particular place in any such port⁵ vessels, not brought into port by pilots, shall anchor or moor.

CHAPTER IV.

PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION.

Prohibitions.

18. No goods specified in the following clauses shall be brought, whether by land or sea, into British India⁶ :—

(a) any book printed in infringement of any law in force in British India

¹ As to power of Chief Customs-authority to appoint a public or license a private warehouse at places other than warehousing ports, see s. 4 (1) of the Inland Bonded Warehouses Act, 1896 (VIII of 1896).

² For instances of such appointment in—

Bombay . . . see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. lxxvi;
Burma . . . see Burma Laws List, Ed. 1897, pp. 83, 85.

³ No arms, ammunition or military stores may be deposited in any warehouse licensed under s. 16 without the sanction of the Local Government - see the Indian Arms Act, 1878 (XI of 1878), s. 7, printed *infra*, p. 246.

⁴ Read now the Indian Ports Act, 1889 (X of 1889), see s. 2 (3) of the Act. Printed, General Acts, Vol. V.

⁵ For instances of notifications issued in the Bombay Presidency under the powers conferred by this section, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. lxxvii.

⁶ See note 1 to s. 3.

on the subject of copyright,¹ when the proprietor of such copyright, or his agent, has given to the Chief Customs-authority a notice in writing that such copyright subsists, and a statement of the date on which it will expire :

- XI of 1876. (b) counterfeit coin : or coin which purports to be Queen's coin of India, or to be coin made under the Native Coinage Act, 1876,² but which is not of the established standard in weight or fineness :
- (c) any obscene book, pamphlet, paper, drawing, painting, representation, figure or article :
- XLV of 1860. ³[(d) goods having applied thereto a counterfeit trade mark within the meaning of the Indian Penal Code,⁴ or a false trade description within the meaning of the Indian Merchandise Marks Act, 1889 ⁵ :]
- IV of 1889. ⁶[(e) goods made or produced beyond the limits of the United Kingdom and British India, and having applied thereto any name or trade mark being, or purporting to be, or being a colourable imitation of, the name or trade mark of any person who is a manufacturer, dealer or trader in the United Kingdom or in British India unless—]
- (i) the name or trade mark is, as to every application thereof, accompanied by a definite indication of the goods having been made or produced in a place beyond the limits of the United Kingdom and British India, and
- (ii) ⁶[the country in which that place is situated is] in that indication indicated in letters as large and conspicuous as any letter in the name or trade mark, and in the same language and character as the name or trade mark ;

¹ See the Indian Copyright Act, 1847 (XX of 1847), printed, General Acts, Vol. I, Ed. 1898, p. 49, also the enactments enumerated under the head " Copyright " on page 106 of the Index to the Indian Statutes, Vol. II., Ed. 1897.

² Printed, General Acts, Vol. II, Ed. 1898, p. 172.

³ These clauses (d) and (e) were substituted for the original cl. (d) by the Indian Merchandise Marks Act, 1889 (IV of 1889), s. 10 (f). Clause (d) ran as follows :—" Articles bearing any names, brands or marks being, or purporting to be, the names, brands or marks of manufacturers resident in the United Kingdom or British India, and not made by such manufacturers."

⁴ Printed, General Acts, Vol. I, Ed. 1898, p. 240.

⁵ Printed, General Acts, Vol. V.

⁶ These words were substituted for the words " that place and the country in which it is situated are " by the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (IX of 1891), s. 3.

(Chapter IV.—Prohibitions and Restrictions of Importation and Exportation.
Secs. 19-19A.)

¹[(f) piece-goods, such as are ordinarily sold by length or by the piece which—

(i) have not conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece, and

(ii) have been manufactured beyond the limits of India,² or,

(iii) having been manufactured within those limits have been manufactured beyond the limits of British India in premises which, if they were in British India,³ would be a factory as defined in the Indian Factories Act, 1881⁴].

XV of 1881

Power to prohibit or restrict importation or exportation of goods.

⁵ 19. The Governor General in Council may from time to time, by notification in the Gazette of India, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of British India or any specified part of British India.

Detention and confiscation of goods whose importation is prohibited.

⁶ 19A. (1) Before detaining any such goods as are or may be specified in or under section 18 or section 19, as the case may be, or taking any further proceedings with a view to the confiscation thereof under this Act, the Chief Customs-officer or other officer appointed by the Local Government in this behalf may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself in accordance with those regulations that the goods are such as are prohibited to be imported.

(2) ⁷ The Governor General in Council may make regulations, either general or special, respecting the detention and confiscation of goods the importation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and confiscation, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section and the mode of verification of such evidence.

¹ Cl. (f) was added by the Indian Merchandise Marks Act, 1889 (IV of 1889), s. 10 (2). Printed, General Acts, Vol. V.

² Cf. definition in General Clauses Act, 1897 (X of 1897), s. 3 (27).

³ Cf. definition *ibid.*, s. 3 (7).

⁴ Printed, *infra*, p. 382.

⁵ A large number of notifications have been issued under this power, but they are too numerous to be quoted in a footnote.

For notification under this section, relating to arms, see Gazette of India, 1879, Pt. I, p. 565. *Ibid.*, with regard to explosives, see Notification No. 1926, Gazette of India, 1883, Pt. I, p. 285.

⁶ S. 19A was added by the Indian Merchandise Mark Act, 1889 (IV of 1889), s. 11. Printed General Acts, Vol. V.

⁷ For regulations made under this sub-section in respect to piece-goods, see Notification No. 1430, Gazette of India, 1891, Pt. I, p. 187.

(Chapter V.—*Levy of, and Exemption from, Customs-duties.* Secs. 20-21.)

(3) Where there is on any goods a name which is identical with, or a colourable imitation of, the name of a place in the United Kingdom or British India, that name, unless accompanied in equally large and conspicuous letters and in the same language and character, by the name of the country in which such place is situate, shall be treated for the purposes of sections 18 and 19 as if it were the name of a place in the United Kingdom or British India.

(4) Such regulations may apply to all goods the importation of which is prohibited by section 18 or under section 19, or different regulations may be made respecting different classes of such goods or of offences in relation to such goods.

(5) The regulations may provide for the informant reimbursing any public officer and the Secretary of State for India in Council all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.

(6) All regulations under this section shall be published in the Gazette of India and in the Calcutta, Fort St. George, Bombay and Burma Gazettes.

CHAPTER V.

LEVY OF, AND EXEMPTION FROM, CUSTOMS-DUTIES.

20. Except as hereinafter provided, customs-duties shall be levied at such rates as may be prescribed by or under any law¹ for the time being in force, on—

Goods
dutiable.

- (a) goods imported or exported by sea into or from any customs-port from or to any foreign port ;
- (b) opium, salt or salted fish imported by sea from any Customs-port into any other customs-port ;
- (c) goods brought from any foreign port to any customs-port, and, without payment of duty, there transhipped for, or thence carried to, and imported at, any other customs-port ; and
- (d) goods brought in bond from one customs-port to another :

Provided that no such duties shall be levied on goods belonging to the Government.

Proviso.

21. Except as otherwise expressly provided by any law for the time being in force, goods whereof any article liable to duty under this Act forms a part or ingredient shall be chargeable with the full duty which would be payable

Goods
partially
composed of
dutiable
articles.

¹ See the Indian Tariff Act, 1894 (VIII of 1894).

(Chapter V.—*Levy of, and Exemption from, Customs-duties.* Secs. 22-25.)

on such goods if they were entirely composed of such article, or, if composed of more than one article liable to duty, then with the full duty which would be payable on such goods if they were entirely composed of the article charged with the highest rate of duty.

Power to
fix tariff-
values.

22. The Governor General in Council may from time to time, by notification¹ in the Gazette of India, fix, for the purpose of levying duties, tariff-values of any goods exported or imported by sea on which customs-duties are by law imposed, and alter any such values fixed by any Tariff Act² for the time being in force. VIII of 189

General
power to
exempt from
Customs-
duties.

23. The Governor General in Council may from time to time, by notification¹ in the Gazette of India, exempt any goods imported into, or exported from, British India, or into or from any specified port therein, from the whole or any part of the customs-duties leviable on such goods.

Power to
authorize, in
special cases,
exemption
from duty.

The Local Government may,³[with the previous sanction of the Governor General in Council] by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature, to be stated in such order, any goods on which customs-duties are leviable.

Baggage in
actual use.

24. The Customs-collector may, subject to any general rules relating to the landing and shipping of passengers' baggage and the passing of the same through the Custom-house, which may be made under section 75, pass free of duty any baggage in actual use, and for this purpose may determine, subject to any such rules, whether any goods shall be treated as baggage in actual use or as goods subject to duty.

Re-imported
articles of
country-
produce.

25. If goods produced or manufactured in British India be imported into any Customs-port from any Foreign Port, such goods shall be liable to all the duties, conditions and restrictions (if any) to which goods of the like kind and value not so produced or manufactured are liable on the first importation thereof:

Proviso.

Provided that, if such importation takes place within three years after the exportation of such goods, and it is proved to the satisfaction of the Customs-collector that the property in such goods has continued in the person by whom, or on whose account, they were exported, the goods may be admitted without payment of duty.

¹ The notifications issued under the powers conferred by this section are too numerous to be quoted in a footnote

² For Tariff Act now in force, see the Indian Tariff Act, 1894 (VIII of 1894).

³ These words were inserted by the Indian Tariff Act, 1894 (VIII of 1894), s. 11.

26. Any goods produced or manufactured in British India which have been exported therefrom, and on the exportation of which any drawback of excise has been received, shall, on being imported into any Customs-port, be subjected, unless the Chief Customs-authority in any particular case otherwise directs by special order, to payment of excise-duty, at the rate to which goods of the like kind and quality are liable at such port.

Excise duty on importation of certain country-goods.

27. All goods derelict, jetsam, flotsam and wreck, brought or coming into any place in British India, shall be subject to the same duties, if any, to which goods of the like kind are for the time being subject on importation at any Customs-port, and shall in other respects be dealt with as if they were imported from a Foreign Port, unless it be shown to the satisfaction of the Customs-collector that such goods are the produce or manufacture of any place from which they are entitled to be admitted duty-free.

Goods derelict and wreck.

28. Provisions and stores produced or manufactured in British India, required for use on board of any vessel proceeding to any Foreign Port, may be shipped free of duty, whether of customs or excise, in such quantities as the Customs-collector determines with reference to the tonnage of the vessel, the numbers of the crew and passengers, and the length of the voyage on which the vessel is about to depart :

Country provisions and stores may be shipped free of duty.

Provided that no rum shall be so shipped on any vessel going on a voyage of less than thirty days' probable duration.

29. On the importation into, or exportation from, any Customs-port of any goods, whether liable to duty or not, the owner of such goods shall, in his bill-of-entry or shipping-bill, as the case may be, state the real value, quantity and description of such goods to the best of his knowledge and belief, and shall subscribe a declaration of the truth of such statement at the foot of such bill.

Owner to declare real value, etc., of goods in bill-of-entry or shipping-bill.

In case of doubt, the Customs-collector may require any such owner or any other person in possession of any invoice, broker's note, policy of insurance or other document, whereby the real value, quantity or description of any such goods can be ascertained, to produce the same, and to furnish any information relating to such value, quantity or description which it is in his power to furnish. And thereupon such person shall produce such document and furnish such information :

Power to require production of invoice, etc.

Provided that, if the owner makes and subscribes a declaration before the Customs-collector, to the effect that he is unable, from want of full information, to state the real value or contents of any case, package or parcel of goods, then the Customs-collector shall permit him, previous to the entry thereof, (1) to open such case, package or parcel, and examine the contents in presence of an officer of customs, or (2) to deposit such case, package or parcel in a public

(Chapter V.—Levy of, and Exemption from, Customs-duties. Secs. 30-32.)

warehouse appointed under section 15 without warehousing the same, pending the production of such information.

“Real value”
defined.

30. For the purposes of this Act the real value shall be deemed to be—

- (a) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold, or are capable of being sold, at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever, except (in the case of goods imported) of the amount of the duties payable on the importation thereof: or,
- (b) where such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place, without any abatement or deduction except as aforesaid.

Examination
of *ad valorem*
goods.

31. Goods chargeable with duty upon the value thereof, but for which a specific value is not fixed by law for the purpose of levying duties thereon shall, without unnecessary delay, be examined by an officer of customs. If it appears that the real value of such goods is correctly stated in the bill-of-entry or shipping-bill, the goods shall be assessed in accordance therewith.

Procedure
where such
goods are
under-valued
by owner.

32. If it appears that such goods are properly chargeable with a higher rate or amount of duty than that to which they would be subject according to the value thereof as stated in the bill-of-entry or shipping-bill, such officer may detain such goods.

In every such case the detaining officer shall forthwith give notice in writing to the owner of the goods of their detention, and of the value thereof as estimated by him; and the Customs-collector shall, within two clear working days after such detention, or within such reasonable period as may with the consent of the parties be arranged, determine either to deliver such goods on payment of duty charged according to the entry of such owner, or to retain the same for the use of Government.

If the goods be retained for the use of Government, the Customs-collector shall cause the full amount stated in the bill as their real value to be paid to the owner in full satisfaction for such goods in the same manner as if they had been transferred by ordinary sale, and shall, after due notice in the local official Gazette or some local newspaper, and without unnecessary delay, cause them to be put up to public auction in wholesale lots for cash on delivery.

If the Customs-collector deems the highest offer made at such sale to be inadequate, he may either adjourn the sale to some other day, to be notified as aforesaid, or buy in the goods, and without unnecessary delay dispose of them for the benefit of Government.

(Chapter V.—Levy of, and Exemption from, Customs-duties. Secs. 33-35.)

If the proceeds arising from such sale exceed the sum paid to the owner, together with (in the case of goods imported) the duty to which the goods are liable and all charges incurred by Government in connection with them, a portion not exceeding one-half of the overplus shall, at the discretion of the Chief Officer of customs, be payable to the officer who detected the under-valuation of the goods.

Nothing in this section shall prevent the Chief Officer of customs, when he has reason to believe that any such under-valuation was solely the result of accident or error, from permitting the owner of the goods, on his application for that purpose, to amend such entry, on payment of such increased rate of duties on the excess of the amended over the original valuation, or on such other terms as the Chief Officer of customs may determine.

33. If, on the first examination of any such goods under section 31, the owner thereof states in writing that such goods are, in consequence of damage sustained before delivery of the bill-of-entry, of value less than that stated in such bill, the Customs-collector, on being satisfied of the fact, may allow abatement of duty accordingly.

Abatement
allowed
on damaged
goods.

The reduced duty to be levied on such goods may be ascertained by either of the following methods, at the option of the owner :—

Reduced duty
how deter-
mined.

- (a) the real value of such goods may be fixed on appraisement by an officer of customs and the duty may be assessed on the value so fixed ; or
- (b) the goods may, after due notice in the local official Gazette or some local newspaper, be sold by public auction at such time (within thirty days from the date of delivery of the bill-of-entry), and at such place, as the Customs-collector appoints ; and the duty may be assessed on the gross amount realized by such sale, without any abatement or deduction, except (in the case of goods imported) of so much as represents the duties payable on the importation thereof.

34. When any goods, the value of which has been fixed by law for the purpose of levying duties thereon, have, before delivery of the bill-of-entry, deteriorated to the extent of more than one-tenth of their value, the duty on such goods shall, if the owner thereof so desires, be assessed *ad valorem*.

Deterioration
of tariff-
value goods.

The real value of such goods shall be ascertained as provided in section 33, and the duty shall be assessed thereon.

35. No abatement of duty on account of damage shall be allowed on wines, spirit or beer, or on any other articles on which duties are levied on quantity and not on value.

No abate-
ment when
duty is levied
on quantity.

(Chapter V.—Levy of, and Exemption from, Customs-duties. Secs. 36-41.)

Restriction on amendment of bill-of-entry or shipping-bill.

36. Except as provided in section 94, no amendment of a bill-of-entry or shipping-bill relating to goods assessed for duty on the declared value, quantity or description thereof shall be allowed after such goods have been removed from the Custom-house.

Alteration of import-duty or tariff-valuation.

37. The rate of duty and the tariff-valuation (if any) applicable to any goods imported shall be the rate and valuation in force on the date on which the bill-of-entry thereof is delivered to the Customs-collector under section 86 :¹

²[Provided that, if such goods are warehoused under this Act, the rate and valuation (if any) applicable thereto shall be the rate and valuation in force on the date on which application is made to clear such goods from the warehouse for home-consumption.]

Explanation.—A bill-of-entry shall, for the purposes of this section, be deemed to be delivered when it is first presented to the proper officer of customs.

Alteration of export duty or tariff-valuation.

38. The rate of duty and tariff-valuation (if any) applicable to any goods exported shall be the rate and valuation in force when a shipping-bill of such goods is delivered under section 137.

Payment of duties short-levied or erroneously refunded.

39. When customs-duties or charges have been short-levied through inadvertence, error, collusion or misconstruction on the part of the officers of customs, or through mis-statement as to real value, quantity or description on the part of the owner,

or when any such duty or charge, after having been levied, has been, owing to any such cause, erroneously refunded,

the person chargeable with the duty or charge so short-levied, or to whom such refund has erroneously been made, shall pay the deficiency or repay the amount paid to him in excess, on demand being made within three months from the date of the first assessment or making of the refund ;

and the Customs-collector may refuse to pass any goods belonging to such person until the said deficiency or excess be paid or repaid.

No refund of charges erroneously levied or paid, unless claimed within three months.

40. No customs-duties or charges which have been paid, and of which repayment, wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be returned, unless such claim is made within three months from the date of such payment.

Power to give credit for, and keep

41. The Customs-collector may, if he thinks fit, instead of requiring payment of customs-duties and charges due from any mercantile firm or public

¹ See the Petroleum (Customs-duty) Act, 1888 (II of 1888), s. 2, as to the rate of duty applicable to petroleum.

² This proviso was substituted for the two original provisos by the Sea Customs Act (1878) Amendment Act (1889), VIII of 1889, s. 1.

body, at the time such duties and charges are payable under this Act, keep with such firm or body an account-current of such duties and charges. Such account shall be settled at intervals not exceeding one month, and such firm or body shall make a deposit or furnish security sufficient in the opinion of the Customs-collector to cover the amount which may at any time be due from them in respect of such duties and charges.

account-current of duties and charges.

CHAPTER VI.

DRAWBACK.

42. When any goods, capable of being easily identified, which have been imported by sea into any customs-port from any foreign port, and upon which duties of customs have been paid on importation, are re-exported by sea from such customs-port to any foreign port, or as provisions or stores for use on board a ship proceeding to a foreign port, seven-eighths of such duties shall, except as otherwise hereinafter provided, be repaid as drawback :

Drawback allowable on re-export.

Provided that, in every such case, the goods be identified to the satisfaction of the Customs-collector at such customs-port, and that the re-export be made within two years from the date of importation, as shown by the records of the custom-house, or within such extended term as the Chief Customs-authority, on sufficient cause being shown, in any case determines.

Conditions for grant of drawback.

43. When any goods, having been charged with import-duty at one customs-port and thence exported to another, are re-exported by sea as aforesaid, drawback shall be allowed on such goods as if they had been so re-exported from the former port :

Drawback on goods exported to customs-port and thence to foreign port.

Provided that, in every such case, the goods be identified to the satisfaction of the officer in charge of the custom-house at the port of final exportation, and that such final exportation be made within three years from the date on which they were first imported into British India.

Proviso.

44. A drawback of the whole of the customs-duties shall be allowed on wine and spirit intended for the consumption of any officer of Her Majesty's Navy, on board of any of Her Majesty's ships in actual service, unless such wine and spirit have been warehoused without payment of duty of the first entry thereof.

Drawback of duties on wine and spirit allowed for officers of Navy.

The quantity of wine and spirit on which drawback may be so allowed in

(Chapter VI.—Drawback. Secs. 45-48.)

any one year for the use of such officers shall not exceed the quantities hereinafter allowed for each such officer respectively ; that is to say—

	<i>Gallons.</i>
For every Admiral	1,260
Vice-Admiral	1,050
Rear-Admiral	840
Captain of 1st and 2nd rate	630
Captain of 3rd, 4th and 5th rate	420
Captain of an inferior rate	210
Lieutenant or other Commanding Officer, Marine-officer, Master, Purser or Surgeon	105

Persons
entering such
wine or
spirit for
drawback to
declare name
and rank of
officer claim-
ing same.

45. Every person clearing and claiming drawback for wine or spirit, as provided in section 44, shall state in the shipping-bill the name of the officer for whose use such wine or spirit is intended, and of the ship in which he serves, as well as the place and date of the last supply for which drawback was allowed.

All such wine and spirit shall be delivered into the charge of the proper officers of Customs at the Port of shipment, to be shipped under their care ; and when the officer commanding the ship has certified the receipt of such wine and spirit into his charge, and any such officer of Customs has certified the shipment, the drawback shall be paid to the person entitled to receive the same.

Transfer of
wine or spirit
from one
Naval officer
to another.

46. The Customs-collector may permit the transfer of any such wine or spirit from one Naval officer to another Naval officer on board of the same, or of any other such vessel, as part of his authorized quantity ;

or may permit the transshipment of any such wine or spirit from one vessel to another for the use of the same Naval officer ;

or the re-landing and warehousing of any such wine or spirit for future re-shipment.

The Customs-collector may also receive back the duties for any such wine or spirit, and allow the same to be cleared for home-consumption.

Provisions
and stores
for Her
Majesty's
Navy.

47. Provisions and stores for the use of Her Majesty's Navy or of any officer thereof which are subject to duty may, in like manner, be transferred, transhipped or re-landed and warehoused, free of duty ;

and where duties have been paid on any such provisions or stores required for shipment, drawback of such duties, whether of customs or excise, shall be allowed on receipt of an application in writing from the officer commanding the ship for which they are intended, or from some other officer duly authorized to make such application.

Indian
Marine and

48. The provisions of sections 44, 45, 46 and 47 as to officers of Her Majesty's Navy apply also to officers of Her Majesty's Indian Marine and

(Chapter VI.—Drawback. Secs. 49-52. Chapter VII.—Arrival and Departure of Vessels. Sec. 53.)

Marine-survey on board of any of the ships of such Marine or Survey proceeding to any port out of India, and the rules prescribed by section 47 as to provisions and stores for the uses of Her Majesty's Navy apply also to provisions and stores for the use of such Marine or Survey.

Marine-survey.

49. The Governor General in Council may from time to time, by notification in the Gazette of India,

Power to declare what goods are identifiable,

(a) declare what goods shall, for the purpose of this chapter, be deemed to be capable of being easily identified; and

(b) prohibit the payment of drawback upon the re-exportation of goods to any specified foreign port in India.

and to prohibit drawback in case of specified foreign port.

50. Notwithstanding anything hereinbefore contained, no drawback shall be allowed—

When no drawback allowed.

(a) upon goods not included in the export-manifest, or

(b) where the goods to be exported are of less value than the amount of drawback claimed, or

(c) where the claim is for drawback amounting, in respect of any single shipment, to less than five rupees, and the Customs-collector thinks fit to reject it, or

(d) on salt, salted fish or opium.

51. No drawback shall be allowed unless the claim to receive such drawback be made and established at the time of re-export.

Time to claim drawback.

No such payment of drawback shall be made until the vessel carrying the goods has put out to sea, or unless payment be demanded within six months from the date of entry for shipment.

When payment made.

52. Every person, or his duly authorized agent, claiming drawback on any goods duly exported, shall make and subscribe a declaration that such goods have been actually exported, and have not been relanded and are not intended to be relanded at any customs-port, and that such person was at the time of entry outwards and shipment, and continues to be, entitled to drawback thereon.

Declaration by parties claiming drawback.

CHAPTER VII.

ARRIVAL AND DEPARTURE OF VESSELS.

Arrival and Entry of Vessels inwards.

53. The Local Government may, by notification in the local official Gazette

Power to fix places

¹ For orders under this clause, see Notifications No. 77, Gazette of India, 1879, Pt. I, p. 344 and Nos. 3532 and 3540, *ibid*, 1897, Pt. I, p. 730; No. 5427-S. R., *ibid*, 1895, Pt. I, p. 919.

(Chapter VII.—Arrival and Departure of Vessels. Secs. 54-58.)

which inward-bound vessels are not to proceed until manifest delivered.

fix a place in any river or port, beyond which no vessel arriving shall pass until a manifest has been delivered to the pilot, officer of Customs or other person duly authorized to receive the same.

Delivery of manifest when vessel anchors below place so fixed.

If, in any river or port wherein a place has been fixed by the Local Government under this section, the master of any vessel arriving remains outside or below the place so fixed, such master shall, nevertheless, within twenty-four hours after the vessel anchors, deliver a manifest to the pilot, officer of Customs or other person authorized to receive the same.

Delivery of manifest where no place has been so fixed.

54. If any vessel arrives at any customs-port in which a place has not been so fixed, the master of such vessel shall, within twenty-four hours after such vessel has anchored within the limits of the port, deliver a manifest to the pilot, officer of Customs or other person authorized to receive the same.

Signature and contents of manifest.

55. Every manifest shall be signed by the master, shall specify all goods, imported in such vessel, showing separately all goods (if any) intended to be landed, transhipped or taken on to another port, and all ships' stores intended for consumption in port or on the homeward voyage, and shall contain such further particulars, and be made out in such form, as the Chief Customs-authority may from time to time direct

Amendment of errors in manifest.

The Customs-collector shall permit the master to amend any obvious error in the manifest, or to supply any omission which in the opinion of such Collector results from accident or inadvertence, by furnishing an amended or supplementary manifest,

and may, if he thinks fit, levy thereon such fee as the Chief Customs-authority from time to time directs.

Except as herein provided, no import-manifest shall be amended.

Duty of person receiving manifest.

56. The person receiving a manifest under section 53 or 54 shall countersign the same and enter thereon such particulars as the Chief Customs-authority from time to time directs in this behalf.

Bulk not to be broken until manifest, etc., delivered, and vessel entered inwards.

57. No vessel arriving in any customs-port shall be allowed to break bulk until a manifest has been delivered as hereinbefore provided; nor until a copy of such manifest, together with an application for entry of such vessel inwards, has been presented by the master to the Customs-collector, and an order has been given thereon for such entry.

Master, if required, to deliver bill-of-lading, etc., to Customs-collector,

58. The master shall, if required so to do by the Customs-collector at the time of presenting such application, deliver to the Customs-collector the bill-of-lading or a copy thereof for every part of the cargo laden on board, and any port-clearance, cockett or other paper granted in respect of such vessel at the

(Chapter VII.—Arrival and Departure of Vessels. Secs. 59-63.)

place from which she is stated to have come, and shall answer all such questions relating to the vessel, cargo, crew and voyage as are put to him by such officer. and answer questions.

The Customs-collector may, if any requisition or question made or put by him under this section is not complied with or answered, refuse to grant such application.

59. Notwithstanding anything contained in section 57, the Customs-collector may grant, prior to receipt of the manifest, and to the entry inwards of the vessel, a special pass permitting bulk to be broken. Special pass for breaking bulk.

The granting of such pass shall be subject to such rules as may from time to time be made by the Chief Customs-authority.

60. Notwithstanding anything contained in section 53, 54, 57 or 58, the Customs-collector may accept from the ship's agent, in lieu of the master, delivery of the manifest or of any other document required by those sections to be delivered by the master. Manifest etc., may be delivered by ship's agent.

Entry outwards, Port-clearance and departure of Vessels.¹

61. No vessel shall take on board any part of her export-cargo, until a written application for entry of such vessel outwards, subscribed by the Master of such vessel, has been made to the Customs-collector, or before an order has been given thereon by such officer for such entry. Order for entry outwards obtained before export-cargo is shipped.

Every application made under this section shall specify the name, tonnage and national character of the vessel, the name of the master, and the name of every place for which cargo is to be shipped.

62. No vessel, whether laden or in ballast, shall depart from any Customs-port until a port-clearance has been granted by the Customs-collector or other officer duly authorized to grant the same. No vessel to depart without port-clearance.

And no pilot shall take charge of any vessel proceeding to sea, unless the master of such vessel produces a port-clearance. No pilot to take charge of vessel proceeding to sea without production of port-clearance.

63. Every application for port-clearance shall be made by the master at least twenty-four hours before the intended departure of the vessel. Application for port-clearance.

¹ Certain formalities are required in respect of the marking of load-lines and the provision of lights and means for making fog-signals before vessels may clear—see the Indian Merchant Shipping Act, 1880 (VII of 1880), ss. 31, 35, 38, 39 and 83, *infra*, p. 304.

For instances of further restriction in respect of grant of port-clearance, see s. 7 of the Indian Steam-ships Act, 1884 (VII of 1884), printed, General Acts, Vol. IV, and s. 29 of the Native Passenger Ships Act, 1887 (X of 1887), printed, General Acts, Vol. V.

(Chapter VII.—Arrival and Departure of Vessels. Sec. 64.)

Master on
applying for
port-clear-
ance to deli-
ver docu-
ments and
answer ques-
tions.

The Master shall, at the time of applying for port-clearance,—

- (a) deliver to the Customs-collector a manifest in duplicate in such form as may from time to time be prescribed by the Chief Customs-authority, signed by such master, specifying all goods to be exported in the vessel, and showing separately all goods and stores entered in the import manifest, and not landed or consumed on board or transhipped :
- (b) deliver to the Customs-collector such shipping-bills or other documents as such Customs-collector, acting under the general instructions of such Chief Customs-authority, requires ; and
- (c) answer to the proper officer of Customs such questions touching the departure and destination of the vessel as are demanded of him.

The provisions of section 55 relating to the amendment of import-manifests shall, *mutatis mutandis*, apply also to export-manifests delivered under this section.

Power to re-
fuse port-
clearance.

64. The Customs-collector may refuse port-clearance to any vessel until—

- (a) the provisions of section 63 are complied with ;
- (b) all port-dues and other charges and penalties due by such vessel, or by the owner or master thereof, and all duties payable in respect of any goods shipped therein, have been duly paid, or their payment secured by such guarantee, or by deposit at such rate, as such Customs-collector directs ;
- (c) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that he will be liable for any penalty imposed under section 167, No. 17, and furnishes security for the discharge of the same ;
- (d) the ship's agent (if any) delivers to the Customs-collector a declaration in writing to the effect that such agent is answerable for the discharge of all claims for damage or short delivery which may be established by the owner of any goods comprised in the import-carriage in respect of such goods.

A ship's agent delivering a declaration under clause (c) of this section shall be liable to all penalties which might be imposed on the master under section 167, No. 17, and a ship's agent delivering a declaration under clause (d) of this section shall be bound to discharge all claims referred to in such declaration.

(Chapter VII.—Arrival and Departure of Vessels. Secs. 65-66. Chapter VIII.—General Provisions affecting Vessels in Port. Secs. 67-69.)

65. When the Customs-collector is satisfied that the provisions of section 63, and if necessary of clauses (b) and (c) and (d) of section 64, have been complied with, he shall grant a port-clearance to the master, and shall return at the same time to such master one copy of the manifest duly countersigned by the proper officer of Customs.

Grant of
port-clear-
ance.

66. Notwithstanding anything contained in sections 64 and 65, the Customs-collector may (subject to such rules as the Chief Customs-Authority may from time to time prescribe) grant a port-clearance to the Master when the ship's agent furnishes such security as the Customs-collector deems sufficient for duly delivering, within five days from the date of such grant, the manifest and other documents specified in section 63.

Grant of
port-clear-
ance on
security of
ship's agent.

CHAPTER VIII.

GENERAL PROVISIONS AFFECTING VESSELS IN PORT.

67. The Customs-collector at any customs-port may at any time depute at his discretion one or more officers of Customs to board any vessel in or arriving at such port.

Power to
depute
Customs-
officer to
board ships.
Duty of such
officer.

Every officer of Customs so sent shall remain on board of such vessel by day and by night unless or until the Customs-collector otherwise orders.

68. Whenever an officer of Customs is so deputed on board of any vessel, the master of such vessel shall be bound to receive on board such officer, and one servant of such officer, and to provide such officer and servant with suitable shelter and accommodation, and likewise with a due allowance of fresh water, and with the means of cooking on board.

Officer and
servant to be
received.
Accommoda-
tion of officer
and servant.

69. Every officer of Customs so deputed shall have free access to every part of the vessel, and may fasten down any hatchway or entrance to the hold and mark any goods before landing, and lock up, seal, mark or otherwise secure any goods on board of such vessel.

Officers of
Customs to
have free
access to
every part
of ship, and
may seal and
secure goods.

If any box, place or closed receptacle in any such vessel be locked, and the key be withheld, such officer shall report the same to the Customs-collector, who may thereupon issue to the officer on board, or to any other officer under his authority, a written order to search.

Power to
authorize
search and
opening of
locks.

On production of such order, the officer bearing the same may require that any such box, place or closed receptacle be opened in his presence; and, if it be not opened upon his requisition, he may break open the same.

(Chapter VIII.—General Provisions affecting Vessels in Port. Secs. 70-73.)

Goods not to be shipped, discharged or water-borne except in presence of officer.

70. Unless with the written permission of the Customs-collector or in accordance with a general permission granted under section 74, no goods, other than passengers' baggage, or ballast urgently required to be shipped for the vessel's safety, shall be shipped or water-borne to be shipped or discharged from any vessel in any customs-port, except in the presence of an officer of Customs.

Period allowed for discharge and shipment of cargo.

71. When an officer of Customs is deputed under section 67 to remain on board a vessel, the tonnage of which does not exceed six hundred tons, a period of thirty working days, reckoned from the date on which he boards such vessel, or such additional period as the Customs-collector directs, shall be allowed for the discharge of import-cargo and the shipment of export-cargo on board of such vessel.

One additional day shall, in like manner, be allowed for every fifty tons in excess of six hundred.

No charge shall be made for the services of a single officer of Customs for such allowed number of working days, or for the services of several such officers (if available) for respective periods not exceeding in the aggregate such allowed number of working days.

Consequence of exceeding same.

If the period occupied in the discharge and shipment of cargo be in excess of thirty working days, together with the additional period (if any) allowed under this section, the vessel shall be charged with the expense of the officer of Customs at a rate not exceeding five rupees per diem (Sundays and holidays excepted) for such excess period.

Allowance for period during which vessel is laid up.

In calculating any period allowed, or any charge made, under this section, the period (if any) during which a vessel, after the completion of the discharge of import-cargo, and before commencing the shipment of export-cargo, is laid up by the withdrawal of the officer of Customs, upon application from the master, shall be deducted.

Goods not to be landed, etc., on Sundays or holidays, without permission, nor except within fixed hours.

72. Except with the written permission of the Customs-collector, no goods, other than passengers' baggage, shall in any customs-port be discharged from any vessel, or be shipped or water-borne to be shipped,—

(a) on any Sunday or on any holiday or day on which the discharge or shipping of cargo, as the case may be, is prohibited by the Chief Customs-authority ;

(b) on any day, except between such hours as such authority from time to time appoints by notification in the official Gazette.

Goods not to be shipped, etc., except at wharves.

73. No goods shall in any customs-port be landed at any place other than a wharf or other place duly appointed for that purpose, and

(Chapter VII.—General Provisions affecting Vessels in Port. Secs. 74-76.)

unless with the written permission of the Customs-collector, or when a general permission has been granted under section 74, no goods shall in any customs-port be shipped or water-borne to be shipped from any place other than a wharf or other place duly appointed for that purpose.

74. Notwithstanding anything contained in section 70 or 73, the Chief Customs-authority may, by notification in the local official Gazette, give general permission for goods to be shipped or water-borne to be shipped in any customs-port from all or any places not duly appointed as wharves, and without the presence or authority of an officer of Customs.

Power to exempt from sections 70 and 73.

75. The Chief Customs-authority may from time to time make rules for the landing and shipping of passengers' baggage and the passing of the same through the custom-house ; and for the landing, shipping and clearing of parcels forwarded by Her Majesty's or other mails, or by other regular packets and passenger-vessels.

Power to make rules regarding baggage and mails.

When any baggage or parcels is or are made over to an officer of Customs for the purpose of being landed, a fee of such amount as the Local Government from time to time directs shall be chargeable thereon, as compensation for the expense and trouble incurred in landing and depositing the same in the custom-house.

Landing fees

76. When any goods are water-borne for the purpose of being landed from any vessel and warehoused or cleared for home-consumption, or of being shipped for exportation on board of any vessel, there shall be sent, with each boat-load or other separate despatch, a boat-note specifying the number of packages so sent and the marks and numbers or other description thereof.

Boat-note.

Each boat-note for goods to be landed shall be signed by an officer of the vessel, and likewise by the officer of Customs on board, if any such officer be on board, and shall be delivered on arrival to any officer of Customs authorized to receive the same.

Each boat-note for goods to be shipped shall be signed by the proper officer of Customs, and, if an officer of Customs is on board of the vessel on which such goods are to be shipped, shall be delivered to such officer. If no such officer be on board, every such boat-note shall be delivered to the master of the vessel, or to an officer of the vessel appointed by him to receive it.

The officer of Customs who receives any boat-note of goods landed, and the officer of Customs, master or other officer, as the case may be, who receives any boat-note of goods shipped, shall sign the same and note thereon such particulars as the Chief Customs-authority may from time to time direct.

The Local Government may from time to time, by notification in the local

(Chapter VII.—General Provisions affecting Vessels in Port. Secs. 77-80.

Chapter IX.—Of Discharge of Cargo and Entry inwards of Goods. Secs. 81-83.)

official Gazette, suspend the operation of this section in any Customs-port or part thereof.

77. All goods water-borne for the purpose of being landed or shipped shall be landed or shipped without any unnecessary delay.

78. Except in cases of imminent danger, no goods discharged into or loaded in any boat for the purpose of being landed or shipped shall be transhipped into any other boat without the permission of an officer of Customs.

79. The Local Government may declare with regard to any customs-port, by notification in the local official Gazette, that, after a date therein specified, no boat not duly licensed and registered shall be allowed to ply as a cargo-boat for the landing and shipping of merchandize within the limits of such port.¹

In any port with regard to which such notification has been issued, the Chief Officer of Customs or other officer whom the Local Government appoints in this behalf, may, subject to such rules and on payment of such fees as the Local Government from time to time prescribes by notification in the local official Gazette, issue licenses for, and register, cargo-boats. Such officer may also, subject to rules so prescribed, cancel any license so issued.

80. The Customs-collector may, whenever he thinks fit, require that goods stowed in bulk, and brought by sea or intended for exportation, shall be weighed or measured on board ship before landing or after shipment, and may levy duty according to the result of such weighing or measurement.

CHAPTER IX.

OF DISCHARGE OF CARGO AND ENTRY INWARDS OF GOODS.

81. When an order for entry inwards of any vessel which has arrived in any Customs-port, or a special pass permitting such vessel to break bulk, has been given, the discharge of the cargo of such vessel may be proceeded with.

82. Except as otherwise provided in this Act, no goods shall be allowed to leave any such vessel, unless they are entered in the original manifest of such vessel, or in an amended or supplementary manifest received under section 55.

83. If the owner of any goods (except such as have been shown in the import-manifest as not to be landed) does not land such goods within such

Goods water-borne to be forthwith landed or shipped. Such goods not to be transhipped without permission. Power to prohibit plying of unlicensed cargo-boats.

Issue of licenses and registration of cargo-boats.

Power to require goods to be weighed or measured on board before landing or after shipment.

Discharge of cargo may commence on receipt of due permission. Goods not to leave ship unless entered in manifest. Procedure in respect of goods not

¹ For rules made by the Government of Bombay for the Port of Karachi, see Notification No. 6315 B., dated 25th August, 1897, Bombay Government Gazette, 1897, Pt. I, p. 1517.

(Chapter IX.—Of Discharge of Cargo and Entry inwards of Goods. Secs. 84-85.)

period as is specified in the bill-of-lading of such goods, or, if no period is so specified, within such number of working days, not exceeding fifteen, after the entry of the vessel importing the same, as the Local Government from time to time appoints by notification in the official Gazette, or

landed
within time
allowed.

if the cargo of any vessel, with the exception of only a small quantity of goods, has been discharged previously to the expiration of the period so specified or appointed, as the case may be,—

the master of such vessel or, on his application, the proper officer of Customs, may then carry such goods to the Custom-house, there to remain for entry.

The Customs-collector shall thereupon take charge of, and grant receipts for, such goods ;

and if notice in writing has been given by the master that the goods are to remain subject to a lien for freight, primage, general average, or other charges of a stated amount, the Customs-collector shall hold such goods until he receives notice in writing that the said charges are paid.

84. At any time after the arrival of any vessel, the Customs-collector may, with the consent of the master of such vessel, cause any small package or parcel of goods to be carried to the custom-house, there to remain for entry, in charge of the officers of Customs, during the remainder of the working days allowed under this Act for the landing of such package or parcel.

Power to
land small
parcels.

If any package or parcel so carried to the custom-house remains unclaimed on the expiration of the number of working days so allowed for its landing, or at the time of the clearance outwards of the vessel from which it was landed, the master may give such notice as is provided in section 83, and the officer in charge of the custom-house shall thereupon hold such package or parcel as provided in that section.

Notice re-
garding un-
claimed
packages.

85. Notwithstanding anything contained in sections 83 and 84, the Customs-collector in any customs-port to which the Local Government, by notification in the local official Gazette, declares this section to be applicable, may permit the master of any vessel, immediately on receipt of an order under section 57 or special pass under section 59, to discharge the cargo of such vessel or any portion thereof into the custody of the ship's agents if willing to receive the same, for the purpose of landing the same forthwith—

Power to
permit im-
mediate dis-
charge.

- (a) at the custom-house or any specified landing-place or wharf ; or
- (b) at any landing-place or wharf belonging to any Port Commissioners, Port Trust or other public body or company.

Any ship's agent so receiving such cargo or portion shall be bound to

(Chapter IX.—Of Discharge of Cargo and Entry inwards of Goods. Secs. 86-88.)

discharge all claims for damage or short delivery which may be established in respect of the same by the owner thereof, and shall be entitled to recover from such owner his charges for service rendered, but not for commission or the like, where any agent for the landing of such cargo or portion has been previously appointed by the owner and such appointment is unrevoked.

The Customs-collector shall take charge of all goods discharged under clause (a) of this section, and otherwise proceed in relation thereto as provided in sections 83 and 88.

A public body or company at whose landing-place or wharf any goods are discharged under clause (b) of this section shall not permit the same to be removed without an order in writing from the Customs-collector.

Entry for
home-con-
sumption or
warehousing.

86. The owner of any goods imported shall, on the landing thereof from the importing ship, make entry of such goods for home-consumption or warehousing by delivering to the Customs-collector a bill-of-entry thereof in duplicate, in such form and containing such particulars, in addition to the particulars specified in section 29, as may, from time to time, be prescribed by the Chief Customs-Authority.

The particulars of such entry shall correspond with the particulars given of the same goods in the manifest of the ship.

Assessment
of dutiable
goods.

87. On the delivery of such bill the duty (if any) leviable on such goods shall be assessed, and the owner of such goods may then proceed to clear the same for home-consumption, or warehouse them, subject to the provisions hereinafter contained.

Procedure
in case of
goods not
cleared or
warehoused
within four
months after
entry of
vessel.

88. If any goods are not entered and cleared for home-consumption, or warehoused, within four months from the date of entry of the vessel, such goods may, after due notice to the owner, if his address can be ascertained, and in the local official Gazette, be sold by public auction, and the proceeds thereof shall be applied, first, to the payment of freight, primage and general average, if the goods are held by the Customs-collector subject to such charges under notice given under section 83, 84 or 85; next, to the payment of the duties which would be leviable on such goods if they were then cleared for home-consumption, and next to the payment of the other charges (if any) payable to the Customs-collector in respect of the same.

The surplus, if any, shall be paid to the owner of the goods, on his application for the same: provided that such application be made within one year from the sale of the goods, or that sufficient cause be shown for not making it within such period.

(Chapter X.—Of Clearance of Goods for Home-consumption. Sec. 89.

Chapter XI.—Warehousing. Secs. 90-92.)

If any goods of which the Customs-collector has taken charge under section 83, 84 or 85 be of a perishable nature, the Customs-collector may at any time direct the sale thereof, and shall apply the proceeds in like manner : Power to direct sale of perishable goods.

Provided that, where any goods liable to be sold under the section are arms, ammunition or military stores, they may be sold or otherwise disposed of at such place (whether within or without British India), and in such manner, as the Local Government may from time to time direct : Proviso.

Provided also, that nothing in this section shall authorize the removal for home-consumption of any dutiable goods without payment of duties of customs thereon.

CHAPTER X.

OF CLEARANCE OF GOODS FOR HOME-CONSUMPTION.

89. When the owner of any goods entered for home-consumption, and (if such goods be liable to duty) assessed under section 87, has paid the import-duty (if any) assessed on such goods and any charges payable under this Act in respect of the same, the Customs-officer may make an order clearing the same ; and such order shall be sufficient authority for the removal of such goods by the owner. Clearance for home-consumption.

CHAPTER XI.

WAREHOUSING.

Of the Admission of Goods into a Warehouse.

90. When any dutiable goods have been entered for warehousing and assessed under section 87, the owner of such goods may apply for leave to deposit the same in any warehouse appointed or licensed under this Act. Application to warehouse

91. Every such application shall be in writing signed by the applicant, and shall be in such form as is from time to time prescribed by the Chief Customs-authority. Form of application.

92. When any such application has been made in respect of any goods, the owner of the goods to which it relates shall execute a bond, binding himself, in a penalty of twice the amount of duty assessed under section 87 on such goods— Warehousing bond.

(a) to observe all rules prescribed by this Act in respect of such goods ;

(b) to pay, on demand, all duties, rent and charges claimable on account of such goods under this Act, together with interest on the same

(Chapter XI.—Warehousing. Secs. 93-96.)

from the date of demand, at such rate not exceeding six per cent. per annum as is for the time being fixed by the Chief Customs-authority ; and

- (c) to discharge all penalties incurred for violation of the provisions of this Act in respect of such goods.

Form of
bond.

Every such bond shall be in the form marked A hereto annexed, or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs-authority,

and shall relate to the cargo or portion of the cargo of one vessel only.

Forwarding
of goods to
warehouse.

93. When the provisions of sections 91 and 92 have been complied with in respect of any goods, such goods shall be forwarded in charge of an officer of Customs to the warehouse in which they are to be deposited.

A pass shall be sent with the goods specifying the name of the importing vessel and of the bonder, the marks, numbers and contents of each package, and the warehouse or place in the warehouse wherein they are to be deposited.

Receipt of
goods at
warehouse.

94. On receipt of the goods, the pass shall be examined by the warehouse-keeper, and shall be returned to the Customs-collector.

No package, butt, cask or hogshead shall be admitted into any warehouse unless it bear the marks and numbers specified in, and otherwise correspond with, the pass for its admission.

If the goods be found to correspond with the pass, the warehouse-keeper shall certify to that effect on the pass, and the warehousing of such goods shall be deemed to have been completed.

If the goods do not so correspond, the fact shall be reported by the warehouse-keeper for the orders of the Customs-collector, and the goods shall either be returned to the custom-house in charge of an officer of Customs, or kept in deposit pending such orders, as the warehouse-keeper deems most convenient.

If the quantity or value of any goods has been erroneously stated in the bill-of-entry, the error may be rectified at any time before the warehousing of the goods is completed, and not subsequently.

Goods how
warehoused.

95. Except as provided in section 100, all goods shall be warehoused in the packages, butts, casks or hogsheads in which they have been imported.

Warrant to
be given
when goods
are ware-
housed.

96. Whenever any goods are lodged in a public warehouse or a licensed private warehouse, the warehouse-keeper, or, in the case of the Bengal Bonded Warehouse Association, the Secretary of the said Association, shall deliver a warrant signed by him as such to the person lodging the goods.

Form of
warrant.

Such warrant shall be in the form B hereto annexed, and shall be transferable by endorsement ; and the endorsee shall be entitled to receive the goods

(Chapter XI.—Warehousing. Secs. 97-100.)

specified in such warrant on the same terms as those on which the person who originally lodged the goods would have been entitled to receive the same.

The Local Government may, by notification in the local official Gazette, exempt salt and salted fish from the operation of this section, and may in like manner cancel such exemption.

Rules relating to Goods in a Warehouse.

97. The Customs-collector, or any officer deputed by him for the purpose, shall have access to any private warehouse licensed under this Act.

Access of Customs-officer to private warehouse.

98. The Customs-collector may at any time by order in writing direct that any goods or packages lodged in any warehouse shall be opened, weighed or otherwise examined ; and, after any goods have been so opened or examined, may cause the same to be sealed or marked in such manner as he thinks fit.

Power to cause packages lodged in warehouse to be opened and examined.

When any goods have been so sealed and marked after examination, they shall not be again opened without the permission of the Customs-collector ; and, when any such goods have been opened with such permission, the packages shall, if he thinks fit, be again sealed or marked as before.

99. Any owner of goods lodged in a warehouse shall, at any time within the hours of business, have access to his goods in presence of an officer of Customs, and an officer of Customs shall, upon application for the purpose being made in writing to the Customs-collector, be deputed to accompany such owner.

Access of owners to warehoused goods.

When an officer of Customs is specially employed to accompany such owner, a sum sufficient to meet the expense thereby incurred shall, if the Customs-collector so require, be paid by such owner to the Customs-collector, and such sum shall, if the Customs-collector so direct, be paid in advance.

100. With the sanction of the Customs-collector, and after such notice given, and under such rules and conditions as the Chief Customs-authority from time to time prescribes, any owner of goods may, either before or after warehousing the same,—

Owner's power to deal with warehoused goods.

- (a) sort, separate, pack and repack the goods, and make such alterations therein as may be necessary for the preservation, sale, shipment or disposal thereof (such goods to be repacked in the packages in which they were imported, or in such other packages as the Customs-collector permits) ;
- (b) fill up any casks of wine, spirit or beer from any casks of the same secured in the same warehouse ;
- (c) mix any wines or spirit of the same sort secured in the same warehouse,

(Chapter XI.—Warehousing. Secs. 101-103.)

erasing from the cask all import-brands unless the whole of the wine or spirit so mixed be of the same brand ;

- (d) bottle-off wine or spirit from any casks ;
- (e) take such samples of goods as may be allowed by the Customs-collector with or without entry for home-consumption, and with or without payment of duty, except such as may eventually become payable on a deficiency of the original quantity.

After any such goods have been so separated and repacked in proper or approved packages, the Customs-collector may, at the request of the owner of such goods, cause or permit any refuse, damaged or surplus goods remaining after such separation or repacking (or, at the like request, any goods which may not be worth the duty) to be destroyed, and may remit the duty payable thereon.

Payment of
rent and
warehouse-
dues.

101. If goods be lodged in a public warehouse, the owner shall pay monthly, on receiving a bill or written demand for the same from the Customs-collector or other officer deputed by him in that behalf, rent and warehouse-dues at such rates as the Chief Customs-authority or such officer of Customs as such Authority from time to time appoints in this behalf may fix.

A table of the rates of rent and warehouse-dues so fixed shall be placed in a conspicuous part of such warehouse.

If any bill for rent or warehouse-dues presented under this section is not discharged within ten days from the date of presentation, the Customs-collector may, in the discharge of such demand (any transfer or assignment of the goods notwithstanding) cause to be sold by public auction, after due notice in the local official Gazette, such sufficient portion of the goods as he may select.

Out of the proceeds of such sale, the Customs-collector shall first satisfy the demand for the discharge of which the sale was ordered, and shall then pay over the surplus (if any) to the owner of the goods :

Provided that the application for such surplus be made within one year from the date of the sale of the goods, or that sufficient cause be shown for not making it within such period.

Goods not to
be taken out
of warehouse,
except as
provided by
this Act.

102. No warehoused goods shall be taken out of any warehouse, except on clearance for home-consumption or shipment, or for removal to another warehouse, or as otherwise provided by this Act.

Period for
which goods
may remain
warehoused
under bond.

103. Any goods warehoused may be left in the warehouse in which they are deposited, or in any warehouse to which they may in manner herein-after provided be removed, till the expiry of three years after the date of

the bond executed in relation to such goods under section 92. The owner of any goods remaining in a warehouse on the expiry of such period shall clear the same for home-consumption or shipment in manner hereinafter provided :

Provided that when the license for any private warehouse is cancelled, and the Customs-collector gives notice of such cancelment to the owner of any goods deposited in such warehouse, such owner shall in manner hereinafter provided, and within seven days from the date on which such notice is given, remove such goods to another warehouse or clear them for home-consumption or shipment.

Goods in private warehouse on cancellation of license.

Of the Removal of Goods from one Warehouse to another.

104. Any owner of goods warehoused under this Act may, at any time within three years from the date of the bond executed in respect of such goods under section 92, and with the permission of the Chief Customs-officer, and on such conditions and after giving such security (if any) as such officer directs, remove goods from one warehouse to another warehouse in the same port.

Power to remove goods from one warehouse to another in same port.

When any owner desires so to remove any goods he shall apply for permission to do so in such form as the Chief Customs-authority from time to time prescribes.

105. Any owner of goods warehoused at any warehousing port may, from time to time, within the said period of three years, remove the same by sea or by inland carriage, in order to be re-warehoused at any other warehousing port.

Power to remove goods from one port to another.

When any owner desires so to remove any goods for such purpose, he shall apply to the Chief Customs-officer, stating the particulars of the goods to be removed, and the name of the port to which it is intended that they shall be removed, together with such other particulars, and in such manner and form as the Chief Customs-authority from time to time prescribes.

Procedure.

106. When permission is granted for the removal of any goods from one warehousing port to another under section 105, an account containing the particulars thereof shall be transmitted by the proper officer of the port of removal to the proper officer of the port of destination ;

Transmission of account of goods to officers at port of destination.

and the person requiring the removal shall before such removal enter into a bond, with one sufficient surety, in a sum equal at least to the duty chargeable on such goods, for the due arrival and re-warehousing thereof at the port of destination within such time as the Chief Customs-authority directs.

Bond for due arrival and re-warehousing.

Such bond may be taken by the proper officer, either at the port of removal or at the port of destination as best suits the convenience of the owner.

If such bond is taken at the port of destination, a certificate thereof, signed by the proper officer of such port, shall, at the time of the removal of such

(Chapter XI.—Warehousing. Secs. 107-111.)

goods, be produced to the proper officer at the port of removal; and such bond shall not be discharged unless such goods are produced to the proper officer, and duly re-warehoused at the port of destination within the time allowed for such removal, or are otherwise accounted for to the satisfaction of such officer; nor until the full duty due upon any deficiency of such goods, not so accounted for, has been paid.

Remover may enter into a general bond.

107. The Chief Customs-authority may permit any person desirous of removing warehoused goods to enter into a general bond, with such sureties in such amount, and under such conditions, as the Chief Customs-authority approves for the removal, from time to time, of any goods from one warehouse to another, either in the same or in a different port, and for the due arrival and re-warehousing of such goods at the port of destination within such time as such Authority directs.

Goods on arrival at port of destination to be subject to same laws as goods on first importation.

108. Upon the arrival of warehoused goods at the port of destination, they shall be entered and warehoused in like manner as goods are entered and warehoused on the first importation thereof, and under the laws and rules, in so far as such laws and rules are applicable, which regulate the entry and warehousing of such last-mentioned goods.

Bond under section 92 to continue in force notwithstanding removal.

109. Every bond executed under section 92 in respect of any goods shall, unless the Chief Officer of Customs in any case deems a fresh bond to be necessary, continue in force, notwithstanding the subsequent removal of such goods to another warehouse or warehousing port.

Clearance for Home-consumption or Shipment.

Clearance of bonded goods for home-consumption.

110. Any owner of goods warehoused may at any time within three years from the date of the bond executed under section 92 in respect of such goods clear such goods for home-consumption by paying (a) the duty assessed on such goods under section 87, or, where the duty on such goods is altered under the provisions hereinafter contained, such altered duty; and (b) all rent, penalties, interest and other charges payable to the Customs-Collector in respect of such goods.

Clearance of same for shipment to foreign port.

111. Any owner of goods warehoused may, at any time within three years from the date of the bond executed under section 92 in respect of such goods, clear such goods for shipment to a foreign port on payment of all rent, penalties, interest and other charges payable as aforesaid and without payment of import-duty on the same:

(Chapter XI.—Warehousing. Secs. 112-116.)

Provided that the Governor General in Council may prohibit¹ the shipment for exportation to any specified foreign port of warehoused goods in respect of which payment of drawback or transshipment has been prohibited under section 49 or 134 respectively.

112. Provisions and stores warehoused at the time of importation may, within the said period of three years, be shipped without payment of duty for use on board of any vessel proceeding to a foreign port.

Clearance of same for shipment as provisions, etc., on vessels proceeding to foreign ports.

113. Application to clear goods from any warehouse for home-consumption or for shipment shall be made in such form as the Chief Customs-authority from time to time prescribes.

Form of application for clearance of goods.

Such application shall ordinarily be made to the Customs-collector at least twenty-four hours before it is intended so to clear such goods.

Application when to be made.

114. If any goods upon which duties are leviable *ad valorem* or on a tariff-valuation receive damage through unavoidable accident after they have been entered for warehousing and assessed under section 87, and before they are cleared for home-consumption, they shall, if the owner so desires, be re-assessed for duty according to their actual value, and a new bond for the same may, at the option of the owner, be executed for the unexpired term of warehousing.

Re-assessment of warehoused goods when damaged.

115. If, after any goods entered for warehousing have been assessed under section 87, any alteration is made in the duty leviable upon such goods or in the tariff-valuation (if any) applicable thereto, such goods shall be re-assessed in accordance with² [such alteration].

Re-assessment on alteration of duty or tariff-valuation.

116. If it appear at the time of clearing any wine, spirit, beer or salt from any warehouse for home-consumption that there exist a deficiency not otherwise accounted for to the satisfaction of the Customs-collector, an allowance on account of ullage and wastage shall be made in adjusting the duties thereon, as follows (namely) :—

Allowance in case of wine, spirit, beer or salt.

- (a) upon wine, spirit and beer in cask to an extent not exceeding the rates specified below, or such other rates as may, from time to

¹ For notifications issued under the powers conferred by this section, s. 49 and s. 134, see Notifications No 77, Gazette of India, 1879, Pt. I p. 344, Nos. 3532 and 3540, *ibid*, 1897, Pt. I, p. 730, and No 5427-S R., *ibid*, 1895, Pt. I, p. 919.

² These words were substituted for the words "the second proviso to section 37" by the Sea Customs Act (1878) Amendment Act, 1889 (VIII of 1889), s. 2, printed, General Acts, Vol. V.

(Chapter XI.—Warehousing. Secs. 117-119.)

time, be prescribed in this behalf by the Local Government and notified in the official Gazette :

For any time not exceeding	6 months, $2\frac{1}{2}$ per cent.
exceeding 6 months and not exceeding 12	„ 5 „
exceeding 12 months and not exceeding 18	„ 7 $\frac{1}{2}$ „
exceeding 18 months and not exceeding 2	years, 10 „
exceeding 2 years and not exceeding 3	„ 12 „

(b) in the case of salt warehoused in a public warehouse, only the amount actually cleared shall be charged with customs-duties :

(c) in the case of salt warehoused in a private warehouse, wastage shall be allowed at such rate as may be prescribed from time to time by the Local Government and notified in the local official Gazette.

Further
special
allowance.

117. When any wine, spirit, beer or salt lodged in a warehouse is found to be deficient at the time of the delivery therefrom, and such deficiency is proved to be due solely to ullage or wastage, the Chief Customs-authority may direct, in respect of any such article, that allowance be made in any special case for a rate of ullage or wastage exceeding that contemplated in section 116.

Of the Forfeiture and Discharge of the Bond.

If goods are
improperly
removed
from
warehouses
or allowed to
remain
beyond time
fixed,
or lost or de-
stroyed,

118. If any warehoused goods are removed from the warehouse in contravention of section 102 ; or

if any such goods have not been removed from the warehouse at the expiration of the time during which such goods are permitted by section 103 to remain in such warehouse, or

if any goods in respect of which a bond has been executed under section 92, and which have not been cleared for home-consumption or shipment, or removed under this Act, are lost or destroyed otherwise than as provided in section 100 or as mentioned in section 122, or are not accounted for to the satisfaction of the Customs-collector ; or

or taken as
samples,

if any such goods have been taken under section 100 as samples without payment of duty,

Collector may
demand duty,
etc.

the Customs-collector may thereupon demand, and the owner of such goods shall forthwith pay, the full amount of duty chargeable on account of such goods, together with all rent, penalties, interest and other charges payable to the Customs-collector on account of the same.

Procedure
on failure to
pay duty, etc.

119. If any owner fails to pay any sum so demanded, the Customs-collector may forthwith either proceed upon the bond executed under section 92, or cause such portion as he thinks fit of the goods (if any) in the warehouse

(Chapter XI.—Warehousing. Secs. 120-122.)

on account of which the amount is due, to be detained with a view to the recovery of the demand ;

and, if the demand be not discharged within ten days from the date of such detention (due notice thereof being given to the owner), the goods so detained may be sold by public auction duly advertised in the local official Gazette.

The nett proceeds of any sale so made of goods so detained shall be written off upon the bond in discharge thereof to the amount received, and if any surplus be obtained from such sale, beyond the amount of the demand, such surplus shall be paid to the owner of the goods : Provided that application for the same be made within one year from the sale, or that sufficient cause be shown for not making the application within such period.

No transfer or assignment of the goods shall prevent the Customs-collector from proceeding against such goods in the manner above provided, for any amount due thereon.

120. When any warehoused goods are taken out of any warehouse, the Customs-collector shall cause the fact to be noted on the back of the bond.

Noting removal of goods.

Every note so made shall specify the quantity and description of such goods, the purposes for which they have been removed, the date of removal, the name of the person removing them, the number and date of the shipping-bill under which they have been taken away if removed for exportation by sea, or of the bill-of-entry if removed for home-consumption, and the amount of duty paid (if any).

121. A register shall be kept of all bonds entered into for customs-duties on warehoused goods, and entry shall be made in such register of all particulars required by section 120 to be specified.

Register of bonds.

When such register shows that the whole of the goods covered by any bond have been cleared for home-consumption or shipment, or otherwise duly accounted for, and when all amounts due on account of such goods have been paid, the Customs-collector shall cancel such bond as discharged in full, and shall on demand deliver it, so cancelled, to the person who has executed or who is entitled to receive it.

Cancellation and return of bonds.

Miscellaneous.

122. If any goods in respect of which a bond has been executed under section 92 and which have not been cleared for home-consumption are lost or destroyed by unavoidable accident or delay, the Chief Customs-authority may in its discretion remit the duties due thereon :

Power to remit duties on warehoused goods lost or destroyed.

Provided that, if any such goods be so lost or destroyed in a private ware-

(Chapter XI.—Warehousing. Secs. 123-127. Chapter XII.—Transshipment. Sec. 128.)

house, notice thereof be given to the Customs-collector within forty-eight hours after the discovery of such loss or destruction.

Responsibility of warehouse-keeper.

123. The warehouse-keeper in respect of goods lodged in a public warehouse, and the licensee in respect of goods lodged in a private warehouse, shall be responsible for their due reception therein and delivery therefrom, and for their safe custody while deposited therein, according to the quantity, weight or gauge reported by the Custom-house officer who has assessed such goods, allowance being made, if necessary, for ullage and wastage as provided in sections 116 and 117 :

Compensation for loss or injury.

Provided that no owner of goods shall be entitled to claim from the Customs-collector, or from any keeper of a public warehouse, compensation for any loss or damage occurring to such goods while they are being passed into or out of such warehouse, or while they remain therein, unless it be proved that such loss or damage was occasioned by the wilful act or neglect of the warehouse-keeper or of an officer of Customs.

Public warehouse to be locked.

124. Every public warehouse shall be under the lock and key of a warehouse-keeper appointed by the Chief Officer of Customs.

Power to decide where goods may be deposited in public warehouse, and on what terms.

125. The Chief Customs-authority, or such officer of Customs as such Authority from time to time appoints in this behalf, may from time to time determine in what division of any public warehouse, and in what manner, and on what terms, any goods may be deposited, and what sort of goods may be deposited in any such warehouse.

Expenses of carriage, packing, etc., to be borne by owners.

126. The expenses of carriage, packing and stowage of goods on their reception into or removal from a public warehouse shall, if paid by the Customs-collector or by the warehouse-keeper, be chargeable on the goods and be defrayed by, and recoverable from, the owner, in the manner provided in section 119.

Bengal Bonded Warehouse Association.

127. All the provisions of this Act relating to private warehouses shall be applicable to the warehouses wherein the Bengal Bonded Warehouse Association receives bonded goods.

CHAPTER XII.

TRANSHIPMENT.

Power to permit transshipment without payment of duty.

128. In the ports of Calcutta, Madras, Bombay, Kárwár, Káráchi, Aden, Rangoon, Moulmain, Akyab, Chittagong and such other ports as the Governor General in Council may from time to time, by notification in the Gazette of India, direct in this behalf, the Customs-collector may, on application by the

(Chapter XII.—Transshipment. Secs. 129-133.)

owner of any goods imported into such port, and specially and distinctly manifested at the time of importation as for transshipment to some other customs or foreign port, grant leave to tranship the same without payment of the duty (if any) leviable at the port of transshipment, and without any security or bond for the due arrival and entry of the goods at the port of destination.

In any customs-port other than a port in which the preceding clause may for the time being be in force, the Customs-collector may, on application by the owner of any goods so imported and manifested, grant leave for transshipment without payment of the duty (if any) leviable at such port: Provided that, where the goods so transhipped are dutiable, and are to be removed to some other customs-port, the applicant shall enter into a bond, with such security as may be required of him, in a sum equal at least to the duty chargeable on such goods, for the due arrival and entry thereof at the port of destination within such time as such Customs-collector directs.

129. An officer of Customs shall, in every case, be deputed free of charge to superintend the removal of transhipped goods from vessel to vessel.

Superintendence of transshipment.

130. The powers conferred on the Customs-collector by section 128 shall be exercised, and the transshipment shall be performed, subject to such rules as may from time to time be made by the Local Government.

Subsidiary rules as to transshipment.

No rules made under this section shall come into force until after the expiry of such reasonable time from the date of the publication of the same as the Local Government may in each case appoint in this behalf.

131. All goods transhipped under the second clause of section 128 for removal to a customs-port shall, on their arrival at such port, be entered in like manner as goods are entered on the first importation thereof, and under the laws and rules in so far as such laws and rules can be made applicable, which regulate the entry of such last-mentioned goods.

Entry and warehousing, on arrival, of goods transhipped under section 128, clause 2.

132. If two or more vessels belonging wholly or in part to the same owner be at any customs-port at the same time, any provisions and stores in use or ordinarily shipped for use on board may, at the discretion of the Customs-collector, be transhipped from one such vessel to any other such vessel without payment of import-duty.

Transshipment of provisions and stores from one vessel to another of same owner without payment of duty.

133. A transshipment-fee on any goods or class of goods transhipped under this Act may be levied at such rates, on each bale or package, or according to weight, measurement, quantity or number, and under such rules, as the Local Government, with the previous sanction of the Governor General in Council,

Levy of transshipment-fee.

(Chapter XII.—*Transshipment. Secs. 134-135. Chapter XIII.—Exportation or Shipment, and Re-landing. Secs. 136-138.*)

may from time to time, by notification in the local official Gazette, prescribe for each port.

Power to prohibit transshipment.

134. The Governor General in Council may from time to time, by notification in the Gazette of India, prohibit, at any specified port,¹ or at all ports the transshipment of any specified class of goods, generally or when destined for any specified ports, or prescribe any special mode of transshipping any specified class of goods.

No goods to be transhipped except as provided.

135. Except as provided in this Act, no goods shall be transhipped at any port or place in British India.

CHAPTER XIII.

EXPORTATION OR SHIPMENT, AND RE-LANDING.

No goods to be shipped, etc., till entry outwards of vessel.

136. Except with the written permission of the Customs-collector, no goods other than passengers' baggage, or ballast urgently required for a vessel's safety, shall be shipped or water-borne to be shipped in any vessel in a customs-port until an order has been obtained under section 61 for entry outwards of such vessel.

When such order has been obtained, the export-cargo of such vessel may be shipped, subject to the provisions next hereinafter contained.

Clearance for shipment.

137. Unless the Chief Customs-authority shall, in the case of any customs-port or wharf, or of any class of goods, otherwise direct by notification in the local official Gazette, no goods, except passengers' baggage, shall be shipped or water-borne to be shipped for exportation, until—

(a) the owner has delivered to the Customs-collector, or other proper officer, a shipping-bill of such goods in duplicate, in such form and containing such particulars in addition to those specified in section 29 as may from time to time be prescribed by the Chief Customs-authority ;

(b) such owner has paid the duties (if any) payable on such goods ; and

(c) such bill has been passed by the Customs-collector.

Bond required in certain cases before exportation.

138. Before any warehoused goods or goods subject to excise-duties, or goods entitled to drawback of customs-duties on exportation, or goods exportable only under particular rules or restrictions, are permitted to be exported,

¹ For order issued under the powers conferred by this section, see Notification No. 3713-S.R., Gazette of India, 1896, Pt. I, p. 478. For orders *ibid* under ss. 49, 111 and 134, see Notifications No. 77, Gazette of India, 1879, Pt. I, p. 344 ; Nos. 3532 and 3540, *ibid*, 1897, Pt. I, p. 780 ; and No. 5427-S.R., *ibid*, 1895, Pt. I, p. 919.

(Chapter XIII.—*Exportation or Shipment, and Re-landing.* Secs. 139-141.)

the owner shall, if required so to do, give security by bond in such sum, not exceeding twice the duty leviable on such goods, as the Custom-collector directs, with one sufficient surety, that such goods shall be duly shipped, exported and landed at the place for which they are entered outwards, or shall be otherwise accounted for to the satisfaction of such officer.

139. When goods are cleared for shipment on a shipping-bill presented after port-clearance has been granted, the Customs-collector may, if he thinks fit, levy, in addition to any duty to which such goods are ordinarily liable, a charge not exceeding—

Additional charge on goods cleared for shipment after port-clearance granted.

(a) in the case of goods liable to duties on fixed tariff-valuations, one per cent. on the tariff-value;

(b) in the case of all other goods, one per cent. on the market-value.

Nothing in this section shall apply to any shipment of treasure or opium.

140. If any goods mentioned in a shipping-bill or manifest be not shipped, or be shipped and afterwards re-landed, the owner shall, before the expiration of five clear working days after the vessel on which such goods were intended to be shipped, or from which they were re-landed, has left the port, give information of such short-shipment or re-landing to the Customs-collector.

Notice of non-shipment or re-landing, and return of duty thereon.

Upon an application being made to the Customs-collector, any duty levied upon goods not shipped, or upon goods shipped and afterwards re-landed, shall be refunded to the person on whose behalf such duty was paid: Provided that no such refund shall be allowed unless information has been given as above required.

141. If, after having cleared from any customs-port, any vessel, without having discharged her cargo, returns to such port, or puts into any other customs-port, any owner of goods in such vessel, if he desires to land or tranship the same or any portion thereof for re-export, may, with the consent of the master, apply to the Customs-collector in that behalf.

Goods re-landed or transhipped from a vessel returning to port, or putting into another port.

The Customs-collector, if he grant the application, shall thereupon send an officer of Customs to watch the vessel, and to take charge of such goods during such re-landing or transhipment.

Such goods shall not be allowed to be transhipped or re-exported free of duty by reason of the previous settlement of duty at the time of first export, unless they are lodged and remain, until the time of re-export, under the custody of an officer of Customs, in a place appointed by the Customs-collector, or are transhipped under such custody.

All expenses attending such custody shall be borne by the owner.

(Chapter XIII.—*Exportation or Shipment, and Re-landing.* Secs. 142-143.

Chapter XIV.—*Spirit.* Sec. 144.)

Vessel re-
turning
to port
may enter
and land
goods under
import-rules.

142. In either of the cases mentioned in section 141, the master of the vessel may enter such vessel inwards, and any owner of goods therein may, with the consent of the master, land the same under the rules herein contained for the importation of goods.

In every such case, any export-duty levied shall be refunded to, and any amount paid in drawback shall be recovered from, such owner.

Landing of
cargo during
repairs.

143. The Customs-collector may, on application by the master of any vessel which is obliged before completing her voyage to put into any customs-port for repairs, permit him to land the cargo, or any portion thereof, and to place it in the custody of an officer of Customs during such repairs, and to re-ship and export the same free of duty.

All expenses attending such custody shall be borne by the master.

CHAPTER XIV.

SPIRIT.

Exportation of Spirit under Bond for Excise-duty.

Rules for
removal of
spirit from
distillery,
without pay-
ment of duty,
for exporta-
tion.

144. The Chief Customs-authority may from time to time make rules prescribing the conditions on which spirit manufactured in British India may be removed from any licensed distillery for exportation without payment of excise-duty.

The person so removing any such spirit shall execute a bond with one or more sureties, in the form marked C hereto annexed, or (when such form is inapplicable or insufficient) in such other form as the said Authority from time to time prescribes, conditioned that such duty shall be paid on all such spirit as is—

- (a) not exported within four months from the date of the bond, or
- (b) exported to a customs-port, unless, ¹[either] the payment of excise-duty as provided by this Chapter in respect thereof at the port of destination ¹[or the delivery of the spirit into a warehouse appointed in this behalf by the Local Government having authority at that port] is within six months from the date of the bond proved to the satisfaction of the proper officer.

The Chief Officer of Customs of the port of exportation may, on sufficient cause shown, extend for a further term not exceeding four months the period

¹ These words were inserted by the Sea Customs Act (1878) Amendment Act, 1887 (II of 1887), s. 1 (1), printed, General Acts, Vol. V.

(Chapter XIV.—Spirit. Secs. 145-149.)

allowed for the exportation of any such spirit, or for the production of such proof that duty has been ¹[so paid or the spirit so delivered].

145. Spirit intended for exportation under bond for the excise-duty shall ²[except when provision is made by any enactment for the time being in force for its being intermediately deposited in a licensed warehouse,] be taken from the distillery direct to the custom-house, under passes to be granted for that purpose by the officers of Excise.

Spirit for export to be taken direct from distillery to custom-house under pass.

146. Spirit brought to the custom-house for exportation under bond for the excise-duty may, ³ previous to shipment, be gauged and proved by an officer of Customs, and the quantity of spirit for which credit is to be given in the settlement of any bond may ³ be determined in the same manner.

Gauging and proving of spirit.

147. Excise-duty shall be recoverable previous to shipment upon the excess (if any) of the quantity of spirit passed from a distillery over the quantity ascertained by gauge and proof at the custom-house, less an allowance for ullage and wastage at such rates as are from time to time prescribed by the Local Government and notified in the local official Gazette.

Duty to be recovered on any deficiency in spirit under bond.

XI of 1882.

148. ⁴[Notwithstanding anything in the Indian Tariff Act, 1882,] spirit exported under bond for excise-duty from any customs-port to any other customs-port shall be charged at the port of importation with excise-duty at the ordinary rate to which spirit of the like kind and strength is liable at such port:

Duty on spirit exported under bond from one Indian port to another.

⁵[Provided that the Local Government may authorise the import of such spirit without the payment of that duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the Local Government in this behalf, and the excise-duty thereon is to be paid on the removal of the spirit from a warehouse so appointed.]

149. Spirit brought to the custom-house ⁶[or to a warehouse licensed under any enactment for the time being in force] for exportation under bond for the excise-duty may, on payment of such duty, be removed for local

Removal for local consumption of spirit intended for exportation.

¹ These words were substituted for the word "paid" by the Sea Customs Act (1878) Amendment Act, 1887 (II of 1887), s. 1 (2), printed, General Acts, Vol. V.

² These words were inserted by the Excise and Sea Customs Law Amendment Act, 1885 (IX of 1885), s. 5 (1), printed, General Acts, Vol. V.

³ The word "may" was substituted for the word "shall" by the Sea Customs Act (1878) Amendment Act, 1887 (II of 1887), s. 2.

⁴ These words were prefixed by the Sea Customs Act (1878) Amendment Act, 1887 (II of 1887), s. 3 (1), printed, General Acts, Vol. V. The Indian Tariff Act, 1882 (XI of 1882), has been repealed (except in the Santhal Parganas) by the Indian Tariff Act, 1894 (VIII of 1894).

⁵ This proviso was added by Act II of 1887, s. 3 (2).

⁶ These words were inserted by the Excise and Sea Customs Law Amendment Act, 1885 (IX of 1885), s. 5 (2), printed, General Acts, Vol. V.

(Chapter XIV.—Spirit. Secs. 150-152.)

consumption under passes to be granted for that purpose by the officers of Excise.

Credit for every such payment shall be given in discharge of the bond to which it relates.

Drawback of Excise-duty on Export of Spirit.

Drawback of
excise-duty
on spirit
exported.

¹ 150. A drawback of excise-duty paid on spirit manufactured in British India and exported to any foreign port under the provisions of section 138 shall be allowed by the Customs-collector at the port of exportation :

Provided that the exportation be made within one year from the date of payment of such excise-duty, and that the spirit, when brought to the custom-house, be accompanied by a pass in which such payment is certified.

Such drawback shall be regulated by the strength and quantity of such spirit as ascertained by gauge and proof by an officer of Customs.

Miscellaneous.

Differential
duty to be
levied in
certain cases.

151. ²[Notwithstanding anything in the Indian Tariff Act, 1882,] if XI of 1882
spirit manufactured in British India upon which excise-duty has been paid is exported from one customs-port to another, and the rate of local excise-duty at the port of importation is higher than that already paid upon such spirit, a differential duty shall be charged thereon, at such rate as the Local Government at such port may, by notification in the local official Gazette, from time to time prescribe :

³[Provided that the Local Government may authorise the import of such spirit without the payment of the differential duty at the port of importation when the spirit is to be delivered into a warehouse appointed by the Local Government in this behalf, and the differential duty is to be paid on the removal of the spirit from a warehouse so appointed.]

Rum-shrub,
etc., how
charged
with duty.

152. Rum-shrub, cordial and other such liquor prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery shall be charged with excise-duty under this Act according to the quantity of spirit used in its preparation as ascertained by such surveyor or officer.

Provisions
respecting
spirit applied
to such
liquors.

The provisions of this Act respecting spirit, except such as relate to gauge and proof, shall apply to such liquor.

¹ As to the application of the provisions of s. 150 to malt liquor, see the Excise (Malt Liquors) Act, 1890 (XIII of 1890), s. 9.

² These words were prefixed by the Sea Customs Act (1878) Amendment Act, 1887 (II of 1887), s. 4 (1), printed, General Acts, Vol. V. Act XI of 1882 has been repealed (except in the Santhál Parganas) by the Indian Tariff Act, 1894 (VIII of 1894).

³ This proviso was added by Act II of 1887, s. 4 (2), printed, General Acts, Vol. V.

(Chapter XIV.—*Spirit*. Secs. 153-155. Chapter XV.—*Coasting-trade*. Secs. 156-157.)

153. No drawback shall be allowed for any spirit on which duty has been paid, nor shall the duty due on any spirit under bond be remitted, unless the spirit is shipped from the custom-house, and in a vessel whereon an officer of Customs has been appointed to superintend the receipt of export-cargo.

Conditions of drawback and remission of duty on spirit.

154. No spirit shipped for exportation shall be re-landed without a special pass from an officer of Excise, in addition to any permission of an officer of Customs which may be required by the law for the time being in force.

Re-land of spirit shipped.

155. When by any law for the time being in force a special duty is imposed on spirit rendered unfit for human consumption, the Local Government¹ may from time to time make rules for ascertaining and determining what spirit imported into British India shall be deemed to have been effectually and permanently so rendered unfit, and for causing such spirit to be so rendered, if necessary, by their own officers, and at the expense of the person importing the same, before the customs-duties leviable thereon are levied.

Power to make rules for ascertaining that imported spirit has been rendered unfit for human consumption.

In the absence of any such rules, or if any dispute arises as to their applicability, the Chief Customs-officer shall decide what spirit is subject only to the said special duty, and such decision shall be final.

Decision where no rules, or their applicability disputed.

CHAPTER XV.

COASTING-TRADE.

156. Except as hereinafter provided, nothing in Chapters VII, IX, X and sections 136, 139 and 141 to 143 inclusive, of this Act shall apply to coasting-vessels or to goods imported or exported in such vessels.

Chapters VII, IX, X and part of XIII inapplicable to coasting-trade.

157. The Local Government may, from time to time, make rules consistent with the provisions of this Chapter,—

Power to regulate coasting-trade.

- (a) extending any provision of the Chapters and sections mentioned in section 156, with or without modification, to any coasting-vessels or to any goods imported or exported in such vessels ;
- (b) exempting any such vessels or goods from any of the other provisions of this Act except those contained in this Chapter ;
- (c) prescribing the conditions on which goods, or any specified class of goods, may be (1) carried in a coasting-vessel, whether shipped at a

¹ For rules made by the Government of Madras for the importation of spirits rendered unfit for human consumption, see Fort St. George Gazette, 1898, Pt. I, p. 22, and by the Government of Bombay, see Bombay Government Gazette, 1898, Pt. I, p. 796.

(Chapter XV.—Coasting-trade. Secs. 158-159.)

foreign port, or at a customs-port, or at a place declared under section 12 to be a port; (2) shipped in a coasting-vessel before all dutiable goods and goods brought in such vessel from a foreign port have been unladen;

- (d) prohibiting the conveyance of any specified class of goods generally, or to or between specified ports in a coasting-vessel.

Coasting-vessels to deliver manifest and obtain port-clearance before leaving port of lading.

158. Before any coasting-vessel departs from the port of lading, or when there are more ports of lading than one, the first port of lading, the master shall fill in, sign and deliver to the Customs-collector a 'manifest in duplicate containing a true specification of all goods to be carried in such vessel, in such form, and accompanied by such shipping-bills or other documents, as may from time to time be prescribed by the Chief Customs-authority.

If the Customs-collector sees no objection to the departure of the vessel, he shall retain the duplicate and return the original manifest, dated and signed by him, together with its accompaniments; and such manifest shall be the port-clearance of the vessel unless, under the general orders of the Chief Customs-authority, a separate port-clearance be prescribed.

Delivery of manifest, etc., on arrival.

159. Within twenty-four hours after the arrival of any coasting-vessel at any customs-port, whether intermediate or final, and before any goods are there discharged, the manifest, together with the other documents referred to in section 158, shall be delivered to the Customs-collector, who shall note on the manifest the date of delivery.

If the vessel has touched at any foreign port between such port of arrival and her last preceding customs-port of departure, the master shall append to the manifest a declaration to that effect, and shall also indicate on the manifest the portions (if any) of the cargo therein described which have been discharged, and subjoin thereto a true specification of all goods shipped at such port.

If the customs-port of arrival be an intermediate port, and a portion only of the cargo is to be discharged thereat, the master shall likewise so deliver an extract from the manifest signed by him, relating to such portion, and the Customs-collector shall, after verifying such extract, return to him the original manifest and all documents accompanying it except those relating to such portion.

If in any case the cargo actually on board any coasting-vessel on her arrival at any customs-port does not, owing to short-shipment, re-landing or other cause, correspond with the specification thereof in the manifest returned to the master under the second clause of section 158, such master shall, before delivery of such manifest under this section, note thereon the particulars of the difference.

(Chapter XV.—Coasting-trade. Secs. 160-164.)

The Customs-collector, when satisfied with the manifest and other documents, shall grant an order to break bulk.

160. Before any coasting-vessel departs from any customs-port at which she has touched during her voyage, the master shall re-deliver the original manifest to the Customs-collector, after indicating thereon the portions (if any) of the cargo therein described which have been discharged, and subjoining thereto a true specification of all goods shipped at such port. He shall also deliver a duplicate, signed by him, of the specification so subjoined.

Departure from intermediate port.

If the Customs-collector sees no objection to the departure of the vessel, he shall proceed as prescribed in the second clause of section 158.

161. The Customs-collector may, for sufficient reason, refuse port-clearance to any coasting-vessel declared to be bound to, or about to touch at, any customs-port, unless the owner or master gives a bond, with such security as the Customs-collector deems sufficient, for the production to the Customs-collector of a certificate from the proper officer of the port to which such vessel is said to be bound, of her arrival at such port within a reasonable time to be prescribed in each case by the Customs-collector.

Power to require bond before port-clearance is granted.

162. When permission has been granted by the Customs-collector for the discharge of cargo from any coasting-vessel—

Discharge of cargo.

- (a) if the vessel has not touched at any intermediate foreign port in the course of her voyage, and has not on board any dutiable goods, the cargo may be forthwith landed and removed by the owner, without entry thereof at the custom-house and clearance for home-consumption, but subject to such general check and control as the Chief Customs-authority may from time to time by rules prescribe ;
- (b) if the vessel has so touched at any such port, or has on board any such goods, such vessel shall be subject to all the provisions of Chapter VII of this Act relating to vessels arriving and such goods, and until such goods have been duly discharged all other goods on board shall be subject to the provisions of Chapter IX of this Act relating to goods imported.

163. If any of the goods on board of any coasting-vessel be subject to any excise-duty, they shall not be unladen without the permission of the proper officer of Excise.

Goods on coasting-vessel, if excisable, not to be unladen without permission.

164. Notwithstanding anything hereinbefore contained, the Chief Customs-authority may authorize the Customs-collector to grant a general pass, on any

Grant and revocation of general pass.

(Chapter XV.—Coasting-trade. Secs. 165-166.)

conditions which such Authority thinks expedient, for the lading and clearance, and for the entry and unlading, of any coasting steam-vessel at any ports of despatch or destination, or at any intermediate ports at which she touches for the purpose of receiving goods or passengers.

Such pass shall be valid throughout British India, or for such ports only as may be specified therein.

Any such general pass may be revoked by order of the Chief Customs-authority by whom the grant thereof was authorised, by notice in writing under the hand of such Authority, delivered to the master or the owner of such steam-vessel, or to any of the crew on board.

165. The Chief Customs-authority may direct that the master of any coasting-vessel which is square-rigged or propelled by steam shall keep, or cause to be kept, a cargo-book, stating the name of the master, the vessel, the port to which she belongs, and the port to which on each voyage he is bound.

At every port of lading such master shall enter, or cause to be entered, in such book the name of such port, and an account of all goods there taken on board of such vessel, with a description of the packages, and the quantities and descriptions of the goods, contained therein or stowed loose, and the names of the respective shippers and consignees, in so far as such particulars are known to him.

At every port of discharge of any such goods such master shall enter, or cause to be entered, in such book the respective days on which such goods or any of them are delivered out of such vessel.

The respective times of departure from every port of lading and of arrival at every port of discharge shall in like manner be duly entered.

Every such master shall, on demand, produce his cargo-book for the inspection of any officer of Customs, and such officer shall be at liberty to make any note or remark therein.

The Chief Customs-authority may, in the case of any vessel the master whereof has been directed to keep a cargo-book under this section, dispense with the manifest required under sections 158, 159 and 160.

166. Any duly empowered officer of Customs may go on board of any coasting-vessel in any port or place in British India, and may at any period of a voyage search any such vessel and examine all goods on board, and all goods then lading or unlading, and may demand the production of any document which ought to be on board of any such vessel.

The Customs-collector may further require that any such document belonging to any coasting-vessel then in port shall be brought to him for inspection.

Rules respecting cargo-books to be kept by masters of coasting-vessels.

Power to board and examine coasting-vessels.

² These words were substituted for the words "landing or shipment," by the same Act.

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
4.—If any vessel which has been within the limits of any port in British India with cargo on board, be afterwards found in any port, bay, river, creek or arm of the sea in British India, light or in ballast, and if the master be unable to give a due account of the customs-port where such vessel lawfully discharged her cargo,	11	such vessel shall be liable to confiscation.
5.—If any goods are put, without the authority of the proper officer of Customs, on board of any tug-steamer or pilot-vessel from any sea-going vessel inward-bound; or if any goods are put, without such authority, out of any tug-steamer or pilot-vessel for the purpose of being put on board of any such vessel outward-bound; or if any goods on which drawback has been granted are put, without such authority, on board of any tug-steamer or pilot-vessel for the purpose of being re-landed,	11	such goods shall be liable to confiscation, and the master of every such tug-steamer or pilot-vessel shall be liable to a penalty not exceeding one thousand rupees.
6.—If any vessel arriving at, or departing from, any customs-port falls, when so required under section 17, to bring-to at any such station as has been appointed by the Chief Customs-authority for the boarding or landing of an officer of Customs,	17	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
7.—If any vessel arriving at any customs-port, after having come to its proper place of mooring or unloading, removes from such place, except with the authority of the Conservator, obtained in accordance with the provisions of the Indian Ports Act, 1875, ¹ or other lawful authority, to some other place of mooring or unloading, or	...	the master of such vessel shall be liable to a penalty not exceeding five hundred rupees, and the vessel, if not entered, shall not be allowed to enter until the penalty is paid.

XII of 1875.

¹ Read now the Indian Ports Act, 1889 (X of 1889), s. 2 (3), printed, General Acts, Vol. V.

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
if any vessel not brought into port by a pilot be not anchored or moored in accordance with any direction of the Chief Customs-authority under section 17,	17	
8.—If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from British India contrary to such prohibition or restriction ; or	18 & 19	such goods shall be liable to confiscation ; and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.
if any attempt be made so to import or export any such goods ; or		
if any such goods be found in any package produced to any officer of Customs as containing no such goods ; or		
if any such goods, or any dutiable goods, be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any port in British India ; or		
if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction,		
9.—If, upon an application to pass any goods through the custom-house, any person not being the owner of such goods, and not having proper and sufficient authority from the owner, subscribes or attests any document relating to any goods on behalf of such owner,	General	such person shall be liable to a penalty not exceeding one thousand rupees.

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties
10.—If any goods, on the entry of which for re-export drawback has been paid, are not duly exported, or are unshipped or re-landed at any customs-port (not having been duly re-landed or discharged under the provisions of this Act),	42 & 43	such goods, together with any vessel used in so unshipping or re-landing them, shall be liable to confiscation ; and the master of the vessel from which such goods are so unshipped or re-landed, and any person by whom or by whose orders or means such goods are so unshipped or re-landed, or who aids or is concerned in such unshipping or re-landing, shall be liable to a penalty not exceeding three times the value of such goods or not exceeding one thousand rupees.
11.—If any wine, spirit, provisions or stores be not laden on board of the vessel on board of which they should, under the provisions of section 45, 46, 47 or 48, be laden, or be unladen from such vessel without the permission of the proper officer of Customs,	44 to 48	such wine, spirit, provisions or stores shall be liable to confiscation.
12.—If any goods be entered for drawback, which are of less value than the amount of the drawback claimed,	50	such goods shall be liable to confiscation.
13.—If, in any river or port wherein a place has been fixed under section 53 by the Local Government, any vessel arriving passes beyond such place, before delivery of a manifest to the pilot, officer of Customs, or other person duly authorized to receive the same,	53	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
14.—If the master of any vessel arriving, which remains outside or below any place so fixed, wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	53	such master shall be liable to a penalty not exceeding one thousand rupees.

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
15.—If after any vessel arriving has entered any customs-port in which a place has not been fixed under section 53, the master of such vessel wilfully omits, for the space of twenty-four hours after anchoring, to deliver a manifest as required by this Act,	54	such master shall be liable to a penalty not exceeding one thousand rupees.
16.—If any manifest delivered under section 53, 54, 60, 63 or 66 is not signed by the person delivering the same and is not in the form or does not contain the particulars required by section 55 or 63, as the case may be, in so far as such particulars are applicable to the ship, cargo and voyage ; or if any manifest so delivered does not contain a specification true to the best of such person's knowledge of all goods imported or to be exported in such vessel,	55 & 63	the person delivering such manifest shall be liable to a penalty not exceeding one thousand rupees.
17.—If any goods entered in the import-manifest of a vessel are not found on board of the vessel ; or if the quantity so found is short, and if such deficiency is not accounted for to the satisfaction of the officer in charge of the custom-house,	55 & 64	the master of such vessel shall be liable to a penalty not exceeding twice the amount of duty chargeable on the missing or deficient goods, if they be dutiable and the duty leviable thereon can be ascertained, or otherwise to a penalty not exceeding five hundred rupees for every missing or deficient package or separate article.
18.—If any person required by this Act to receive a manifest from any master of a vessel, refuses so to do, or fails to countersign the same or to enter thereon the particulars referred to in section 56,	53, 54 & 56	such person shall be liable to a penalty not exceeding five hundred rupees.
19.—If bulk be broken in any vessel previous to the grant by the Customs-collector of an order for entry inwards or a special pass permitting bulk to be broken,	57 & 59	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>20.—If any bill-of-lading or copy required under section 58 is false and the master is unable to satisfy the Customs-collector that he was not aware of the fact; or if any such bill or copy has been altered with fraudulent intent; or</p> <p>if the goods mentioned in any such bill or copy have not been <i>bond fide</i> shipped as shown therein; or</p> <p>if any such bill-of-lading or any bill-of-lading of which a copy is delivered, has not been made previously to the departure of the vessel from the place where the goods referred to in such bill-of-lading were shipped; or</p> <p>if any part of the cargo has been staved, destroyed or thrown overboard; or if any package has been opened and such part of the cargo or such package be not accounted for to the satisfaction of the Customs-collector,</p>	58	the master of the vessel shall be liable to a penalty not exceeding one thousand rupees.
21.—If any master of a vessel attempts to depart without a port-clearance,	62	such master shall be liable to a penalty not exceeding five hundred rupees.
22.—If any vessel actually departs without a port-clearance,	62	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
23.—If any pilot takes charge of any vessel proceeding to sea, notwithstanding that the master of such vessel does not produce a port-clearance,	62	such pilot, on conviction before a Magistrate, shall be liable to fine not exceeding one thousand rupees.
24.—If any master of a vessel refuses to receive on board an officer of Customs deputed under section 67,	68	such master shall be liable to a penalty not exceeding five hundred rupees for each day during which such officer is not received on board; and the vessel, if not entered, shall not be allowed to enter until such penalty is paid.

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
25.—If any master of a vessel refuses to receive on board one servant of such officer, or to provide such officer and servant with suitable shelter and accommodation, and with a due allowance of fresh water, and with the means of cooking on board,	68	such master shall, in each such case, be liable to a penalty not exceeding five hundred rupees.
<p>26.—If any master of a vessel refuses to allow such vessel, or any box, place or closed receptacle in such vessel, to be searched when so required by an officer of Customs bearing a written order to search; or</p> <p>if an officer of Customs places any lock, mark or seal upon any goods in a vessel, and such lock, mark or seal is wilfully opened, altered or broken, before due delivery of such goods; or</p> <p>if any such goods are secretly conveyed away; or</p> <p>if any hatchway or entrance to the hold of a vessel, after having been fastened down by an officer of Customs, is opened without his permission,</p>	69	the master of such vessel shall be liable, upon conviction before a Magistrate, to a fine not exceeding one thousand rupees,
27.—If the master of any vessel laid up by the withdrawal of the officer of Customs shall, before application is made by him for an officer of Customs to superintend the receipt of cargo, cause or suffer to be put on board of such vessel any goods whatever, in contravention of section 70,	70	such master shall be liable to a penalty not exceeding one thousand rupees, and the goods, if protected by a pass, shall be liable to be re-landed for examination at the expense of the vessel, and, if not protected by a pass, shall be liable to confiscation.
28.—If any master of a vessel, in any case other than that provided for by No. 27, causes or suffers any goods to be discharged, shipped or water-borne contrary to any of the provisions of section 70, 72 or 75,	70, 72 & 75	such master shall be liable to a penalty not exceeding one thousand rupees; and all goods so discharged, shipped or water-borne shall be liable to confiscation.

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>29.—If, when a boat-note is required by section 76, any goods water-borne for the purpose of being landed from any vessel, and warehoused or passed for importation, or of being shipped for exportation, be found without such note ; or</p> <p>if any goods are found on board any boat in excess of such boat-note, whether such goods are intended to be landed from, or to be shipped on board of, any vessel,</p>	76	such goods shall be liable to confiscation ; and the person by whose authority the goods are being landed or shipped, and the person in charge of the boat, shall each be liable to a penalty not exceeding twice the amount of duty (if any) leviable on the said goods.
<p>30.—If any person refuses to receive, or fails to sign, or to note the prescribed particulars upon, any boat-note, as required by section 76, or if any master or officer of a vessel receiving the same fails to deliver it when required so to do by any officer of Customs authorized to make such requisition,</p>	76	such person, master or officer shall be liable to a penalty not exceeding five hundred rupees.
<p>31.—If any goods are, without permission, shipped or water-borne to be shipped, or are landed, except from or at a wharf or other place duly appointed for the purpose ; or</p>	73	such goods shall be liable to confiscation ; and the person by whose authority the goods are shipped, landed, water-borne or transhipped, and the person in charge of the vessel employed in conveying them, shall each be liable to a penalty not exceeding twice the amount of the duty (if any) leviable on such goods.
<p>if any goods water-borne for the purpose of being landed or shipped are not landed or shipped without unnecessary delay ; or</p>	77	
<p>if the boat containing such goods be found out of the proper track between the vessel and the wharf or other proper place of landing or shipping, and such deviation be not accounted for to the satisfaction of the Customs-collector ; or</p>		
<p>if any goods are transhipped contrary to the provisions of section 78,</p>	78	

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
32.—If, after the issue of a notification under section 79 with regard to any port, any goods are found within the limits of such port on board of any boat not duly licensed and registered,	79	such goods unless they are covered by a special permit from the Customs-collector, shall be liable to confiscation, and the owner or the person in charge of the boat shall be liable to a penalty not exceeding one hundred rupees.
33.—If any master of a vessel discharges or suffers to be discharged any goods not duly entered in the manifest of such vessel,	55 & 82	such master shall be liable to a penalty not exceeding one thousand rupees.
34.—If any goods are found concealed in any place, box or closed receptacle in any vessel, and are not duly accounted for to the satisfaction of the officer in charge of the custom-house,	General	such goods shall be liable to confiscation.
35.—If any goods are found on board in excess of those entered in the manifest, or not corresponding with the specification therein contained,	55 & 82	such goods shall be liable to confiscation, or to be charged with such increased rates of duty as the Chief Officer of Customs directs.
36.—If, after any goods have been landed and before they have been passed through the custom-house, the owner removes or attempts to remove them, with the intention of defrauding the revenue,	86 & 87	such goods shall be liable to confiscation; or if the goods cannot be recovered the owner shall be liable, in addition to full duty, to a penalty not exceeding twice the amount of such duty, if the goods be dutiable and the duty leviable thereon can be ascertained; or otherwise to a penalty not exceeding one thousand rupees for every missing or deficient package or separate article.
37.—If it be found, when any goods are entered at, or brought to be passed through, a custom-house either for importation or exportation, that (a) the packages in which they are contained differ widely from the description given in the bill of entry or application for passing them; or	86 & 137	such packages, together with the whole of the goods contained therein, shall be liable to confiscation, and every person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
<p>(b) the contents thereof have been wrongly described in such bill or application as regards the denominations, characters or conditions according to which such goods are chargeable with duty, or are being imported or exported ; or</p> <p>(c) the contents of such packages have been mis-stated in regard to sort, quality, quantity or value ; or</p> <p>(d) goods not stated in the bill-of-entry or application have been concealed in, or mixed with, the articles specified therein, or have apparently been packed so as to deceive the officers of Customs, and such circumstance is not accounted for to the satisfaction of the Customs-collector,</p>		
<p>38.—If, when goods are passed by tale or by package, any omission or misdescription thereof tending to injure the revenue be discovered,</p>	<p>86 & 94</p>	<p>the person guilty of such omission or misdescription shall be liable to a penalty not exceeding ten times the amount of duty which might have been lost to Government by such omission or misdescription, unless it be proved to the satisfaction of the officer in charge of the custom-house that the variance was accidental.</p>
<p>39.—If, without entry duly made, any goods are taken or passed out of any custom-house or wharf,</p>	<p>86</p>	<p>the person so taking or passing such goods shall, in every such case, be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.</p>
<p>40.—If any prohibited or dutiable goods are found, either before or after landing, concealed in any passenger's baggage,</p>	<p>General</p>	<p>such passenger shall be liable to a penalty not exceeding five hundred rupees, and such goods shall be liable to confiscation.</p>

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
41.—If any goods entered to be warehoused are carried into the warehouse, unless with the authority, or under the care, of the proper officers of Customs, and in such manner, by such persons, within such time, and by such roads or ways, as such officers direct,	93	such goods shall be liable to confiscation, and any person so carrying them shall be liable to a penalty not exceeding one thousand rupees.
42.—If any goods entered to be warehoused are not duly warehoused in pursuance of such entry, or are withheld, or removed from any proper place of examination before they have been examined and certified by the proper officer,	94	such goods shall be deemed not to have been duly warehoused, and shall be liable to confiscation.
43.—If any warehoused goods be not warehoused in accordance with sections 94 and 95,	94 & 95	such goods shall be liable to confiscation.
44.—If the licensee of any private warehouse licensed under this Act does not open the same when required so to do by any officer entitled to have access thereto, or, upon demand made by any such officer, refuses access to any such officer,	97	such licensee shall be liable to a penalty not exceeding one thousand rupees, and shall further be liable to have his license forthwith cancelled.
45.—If the keeper of any public warehouse, or the licensee of any private warehouse, neglects to stow the goods warehoused therein, so that easy access may be had to every package and parcel thereof,	Chapter XI	such keeper or licensee shall, for every such neglect, be liable to a penalty not exceeding fifty rupees.
46.—If the owner of any warehoused goods, or any person in the employ of such owner, clandestinely opens any warehouse, or, except in presence of the proper officer of Customs, gains access to his goods,	99	such owner or person shall, in every such case, be liable to a penalty not exceeding one thousand rupees.
47.—If any warehoused goods are opened in contravention of the provisions of section 98 ; or if any alteration be made in such goods or in the packing thereof, except as provided in section 100,	98 & 100	such goods shall be liable to confiscation.

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
48.—If any goods lodged in a private warehouse are found at the time of delivery therefrom to be deficient, and such deficiency is not due solely to ullage or wastage, as allowed under sections 116 and 117,	123	the licensee of such warehouse shall, unless the deficiency be accounted for to the satisfaction of the Customs-collector, be liable to a penalty equal to five times the duty chargeable on the goods so deficient.
49.—If the keeper of any public warehouse, or the licensee of any private warehouse, fails, on the requisition of any officer of Customs, to produce any goods which have been deposited in such warehouse, and which have not been duly cleared and delivered therefrom, and is unable to account for such failure to the satisfaction of the Customs-collector,	123	such keeper or licensee shall for every such failure, be liable to pay the duties due on such goods, and also a penalty not exceeding fifty rupees in respect of every package or parcel so missing or deficient.
50.—If any goods, after being duly warehoused, are fraudulently concealed in, or removed from, the warehouse, or abstracted from any package, or transferred from one package to another, or otherwise, for the purpose of illegal removal or concealment,	Chapter XI	such goods shall be liable to confiscation, and any person concerned in any such offence shall be liable to a penalty not exceeding one thousand rupees.
51.—If any goods lodged in a private warehouse are found to exceed the registered quantity,	Ditto	such excess, unless accounted for to the satisfaction of the officer in charge of the custom-house, shall be charged with five times the ordinary duty thereon,
52.—If any goods be removed from the warehouse in which they were originally deposited, except in the presence, or with the sanction, of the proper officer, or under the proper authority for their delivery,	Ditto	such goods shall be liable to confiscation, and any person so removing them shall be liable to a penalty not exceeding one thousand rupees.
53.—If any person illegally takes any goods out of any warehouse without payment of duty, or aids, assists or is concerned therein,	Ditto	such person shall be liable to a penalty not exceeding one thousand rupees.

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
54.—If any person contravenes any rule regarding the process of transshipment made by the Local Government, or	130	such person shall be liable to a penalty not exceeding one thousand rupees; and any goods in respect of which such offence has been committed shall be liable to confiscation.
any prohibition or order relating to transshipment notified by the Governor General in Council, or	131	
transships goods not allowed to be transhipped,		
55.—If any goods be taken on board of any vessel at any customs-port in contravention of section 136,	136	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
56.—If any goods not specified in a duly passed shipping-bill are taken on board of any vessel, contrary to the provisions of section 137,	137	the master of such vessel shall be liable to a penalty not exceeding fifty rupees for every package of such goods.
57.—If any goods specified in the manifest of any vessel, or in any shipping-bill, are not duly shipped before the departure of such vessel, or are re-landed;	140	The owner of such goods shall be liable to a penalty not exceeding one hundred rupees; and such goods shall be liable to confiscation.
and notice of such short-shipment or re-landing be not given as required by section 140,		
58.—If any goods duly shipped on board of any vessel be landed, except under section 141, 142 or 143, at any place other than that for which they have been cleared,	141	the master of such vessel shall, unless the landing be accounted for to the satisfaction of the Customs-collector, be liable to a penalty not exceeding three times the value of such goods so landed.
59.—If any goods on account of which drawback has been paid be not found on board of any vessel referred to in section 142,	142 ¹	the master of such vessel shall be liable to a penalty not exceeding the entire value of such goods, unless the fact be accounted for to the satisfaction of the Customs-collector.

¹ These figures were substituted for the figures "141" by the Repealing and Amending Act, 1891 (XII of 1891).

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
60.—If any person, without a special pass from an officer of Excise at the place of exportation, re-lands or attempts to re-land any spirit shipped for exportation,	155	such person shall be liable to a penalty not exceeding five hundred rupees.
61.—If any person wilfully contravenes any rule relating to spirits made under section 155,	154	such person shall be liable to a penalty not exceeding five hundred rupees : and all such spirit shall be liable to confiscation.
62.—If, in contravention of any rules made under section 157, any goods are taken into, or put out of, or carried in, any coasting-vessel ; or if any such rules be otherwise infringed,	157	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.
63.—If, contrary to any such rules, any coasting-vessel touches at any foreign port, or deviates from her voyage, unless forced by unavoidable circumstances ; or if the master of any such vessel which has touched at a foreign port fails to declare the same in writing to the Customs-collector at the customs-port at which such vessel afterwards first arrives,	159	the master of such vessel shall be liable to a penalty not exceeding one thousand rupees ; and if any goods liable to export-duty have been landed from, or any goods liable to import-duty have been shipped in, such vessel at such foreign port, such master shall further be liable to a penalty not exceeding three times the duty which would have been leviable on such goods if they had been exported from, or imported at, a customs-port to or from a foreign port, as the case may be.
64.—If in the case of any coasting-vessel any of the provisions of section 158, 159 or 160 are not complied with,	158, 159 & 160	the master of such vessel shall in each such case be liable to a penalty not exceeding five hundred rupees.
65.—If the person executing any bond given under section 161 fail to produce the certificate mentioned in the same section, or to show sufficient reason for its non-production,	161	such person shall be bound to pay a penalty equal to double the amount of customs-duties which would have been chargeable on the export-cargo of the vessel had she been declared to be bound to a foreign port.

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
66.—If the master of any coasting-vessel violates any of the conditions under which a general pass for such vessel has been granted,	164	such master shall be liable to a penalty not exceeding one thousand rupees.
67.—If any master of a coasting-vessel contravenes any of the provisions of section 165,	165	such master shall be liable to a penalty not exceeding five hundred rupees.
68.—If, upon examination, any package entered in the cargo-book required by section 165, as containing dutiable goods, is found not to contain such goods; or if any package is found to contain dutiable goods not entered, or not entered as such, in such book,	165	such package, with its contents, shall be liable to confiscation.
69.—If the master of any coasting-vessel required under section 165 to keep a cargo-book fails correctly to keep, or to cause to be kept, such book, or to produce the same on demand; or if at any time there be found on board of any such vessel any goods not entered in such book as laden, or any goods noted as delivered; or if any goods entered as laden and not noted as delivered, be not on board,	165	such master shall be liable to a penalty not exceeding five hundred rupees.
70.—If, contrary to the provisions of this or any other law for the time being in force relating to the Customs, any goods are laden on board of any vessel in any customs-port and carried coastwise; or if any goods which have been brought coastwise are so unladen in any such port; or if any goods are found on board of any coasting-vessel without being entered in the manifest or cargo-book or both (as the case may be) of such vessel,	Chapter XV	such goods shall be liable to confiscation, and the master of such vessel shall be liable to a penalty not exceeding five hundred rupees.

(Chapter XVI.—Offences and Penalties. Sec. 167.)

Offences.	Section of this Act to which offence has reference.	Penalties.
71.—If the master of any coasting-vessel refuses to bring any document to the Customs-collector when so required under section 166,	166	such master shall be liable to a penalty not exceeding two hundred rupees.
72.—If any person makes or signs, or uses, any declaration or document used in the transaction of any business relating to the Customs, knowing such declaration or document to be false in any particular; or counterfeits, falsifies or fraudulently alters or destroys any such document, or any seal, signature, initials or other mark made or impressed by any officer of Customs in the transaction of any business relating to the Customs; or, being required under this Act to produce any document, refuses or neglects to produce such document; or, being required under this Act to answer any question put to him by an officer of Customs, does not truly answer such question,	General .	such person shall, on conviction of any such offence before a Magistrate, be liable to a fine not exceeding one thousand rupees.
73.—If any person on board of any vessel or boat in any customs-port, or who has landed from any such vessel or boat, upon being asked by any such officer whether he has dutiable or prohibited goods about his person or in his possession, declares that he has not, and if any such goods are, after such denial, found about his person, or in his possession,	General .	such goods shall be liable to confiscation, and such person shall be liable to a penalty not exceeding three times the value of such goods.
74.—If any officer of Customs requires any person to be searched for dutiable or prohibited goods, or to be detained, without having reasonable ground to believe that he has such goods about his person, or has been guilty of an offence relating to the Customs,	169	such officer shall, on conviction before a Magistrate, be liable to a fine not exceeding five hundred rupees.

(Chapter XVI.—Offences and Penalties. Sec. 168.)

Offences.	Section of this Act to which offence has reference.	Penalties.
75.—If any officer of Customs, or other person duly employed for the prevention of smuggling, is guilty of a wilful breach of the provisions of this Act,	General . . .	such officer or person shall, on conviction before a Magistrate, be liable to simple imprisonment for any term not exceeding two years, or to fine, or to both.
76.—If any officer of Customs, or other person duly employed for the prevention of smuggling, practises, or attempts to practise, any fraud, for the purpose of injuring the Customs-revenue, or abets or connives at any such fraud, or any attempt to practise any such fraud,	Ditto . . .	Ditto ditto.
77.—If any Police-officer, whose duty it is, under section 180, to send a written notice or cause goods to be conveyed to a custom-house, neglects so to do,	180	such officer shall, on conviction before a Magistrate, be liable to a penalty not exceeding one hundred rupees.
78.—If any person intentionally obstructs any officer of Customs or other person duly employed for the prevention of smuggling, in the exercise of any powers given under this Act to such officer or person,	General . . .	such person shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding six months, or to a fine not exceeding one thousand rupees, or to both.
79.—If any officer of Customs, except in the discharge in good faith of his duty as such officer, discloses any particulars learned by him in his official capacity in respect of any goods, or shows any samples delivered to him in such capacity, or if any officer of Customs, except as permitted by this Act, parts with the possession of any samples delivered to him in his official capacity,	195	he shall be liable to a penalty not exceeding one thousand rupees.
80.—If any person, without the approval of the Customs-collector under section 202, acts as an agent for the transaction of business as therein mentioned.	202	such person shall be liable to a penalty not exceeding five hundred rupees.

Nothing in the second column of the above schedule shall be deemed to have the force of law.

(Chapter XVI.—Offences and Penalties. Sec. 168. Chapter XVII.—Proce-
— — — — — dure relating to Offences, Appeals, etc. Secs. 169-172.)

Packages and
contents in-
cluded in con-
fiscation of
goods.

168. The confiscation of any goods under this Act includes any package in which they are found, and all the other contents thereof.

Also con-
veyances and
animals used
in removal.

Every vessel, cart or other means of conveyance, and every horse or other animal, used in the removal of any goods liable to confiscation under this Act shall in like manner be liable to confiscation.

Tackle, etc.,
included in
confiscation
of vessels.

The confiscation of any vessel under this Act includes her tackle, apparel and furniture.

CHAPTER XVII.¹

PROCEDURE RELATING TO OFFENCES, APPEALS, &c.

Power to
search on
reasonable
suspicion.

169. Any officer of Customs duly employed in the prevention of smuggling may search any person on board of any vessel in any port in British India, or any person who has landed from any vessel :

Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person.

Persons may,
before search,
require to be
taken before
Magistrate
or Customs-
collector.

170. When any officer of Customs is about to search any person under the provisions of section 169, such person may require the said officer to take him, previous to search, before the nearest Magistrate or Customs-collector.

If such requisition be made, the officer of Customs may detain the person making it until he can bring him before the nearest Magistrate or Customs-collector.

The Magistrate or Customs-collector before whom any person is so brought shall, if he see no reasonable ground for search, forthwith discharge such person ; but, if otherwise, shall direct that the search be made.

A female shall not be searched by any but a female.

Power to stop
vessels, carts,
etc., and
search for
goods on
reasonable
suspicion.

171. Any duly empowered officer of Customs or other person duly employed for the prevention of smuggling may stop and search for smuggled goods any vessel, cart or other means of conveyance : Provided that he has reason to believe that smuggled goods are contained therein.

Power to
issue search-
warrants.

172. Any Magistrate may, on application by a Customs-collector, stating his belief that dutiable or prohibited goods are secreted in any place within the local limits of the jurisdiction of such Magistrate, issue a warrant to search for such goods.

¹ The powers conferred on officers of Customs under this Chapter, may be exercised by them for the prevention of offences under the Indian Emigration Act, 1883 (XXI of 1883), see s. 98 of that Act, printed, General Acts, Vol. IV.

(Chapter XVII.—*Procedure relating to Offences, Appeals, etc.* Secs.
173-179.)

Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the law relating to Criminal Procedure.¹

173. Any person against whom a reasonable suspicion exists that he has been guilty of an offence under this Act may be arrested in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling.

Persons reasonably suspected may be arrested.

174. Every person arrested on the ground that he has been guilty of an offence under this Act shall forthwith be taken before the nearest Magistrate or Customs-collector.

Persons arrested to be taken to nearest Magistrate or Customs-collector.

175. When any such person is taken before a Magistrate, such Magistrate may if he thinks fit, either commit him to gaol or order him to be kept in the custody of the police for such time as is necessary to enable such Magistrate to communicate with the proper officers of Customs :

Persons taken before Magistrate may be detained or admitted to bail.

Provided that any person so arrested, committed or kept shall be released on giving security to the satisfaction of the Magistrate to appear at such time and place as such Magistrate appoints in this behalf.

176. If any person liable to be arrested under this Act is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape, he may at any time afterwards be arrested and taken before a Magistrate, to be dealt with as if he had been arrested at the time of committing such offence.

Person escaping may be afterwards arrested.

177. When any person employed on the crew of any of the ships of Her Majesty's Navy, Indian Marine or Marine Survey is arrested under this Act, the arresting officer shall forthwith give notice thereof to the commanding officer of the ship, who shall thereupon place such person in security on board of such ship, until the arresting officer has obtained a warrant from a Magistrate for bringing up such person to be dealt with according to law.

Persons in Her Majesty's Navy, when arrested, to be secured on board until warrant procured.

The Magistrate shall grant such warrant upon complaint made to him by the arresting officer, stating the offence for which the person is detained.

178. Any thing liable to confiscation under this Act may be seized in any place, either upon land or water, by any officer of Customs or other person duly employed for the prevention of smuggling.

Seizure of things liable to confiscation.

179. All things seized on the ground that they are liable to confiscation under this Act shall, as soon as conveniently may be, be delivered into the care of any Customs-officer authorised to receive the same.

Things seized how dealt with.

¹ See now Act V of 1898.

(Chapter XVII.—*Procedure relating to Offences, Appeals, etc. Secs.*
180-182.)

If there be no such officer at hand, all such things shall be carried to and deposited at the custom-house nearest to the place of seizure.

If there be no custom-house within a convenient distance, such things shall be deposited at the nearest place appointed by the Chief Customs-authority for the deposit of things so seized.

Procedure in
respect of
things seized
on suspicion.

180. When any things liable to confiscation under this Act are seized by any Police-officer on suspicion that they have been stolen, he may carry them to any police-station or Court at which a complaint connected with the stealing or receiving of such things has been made, or an enquiry connected with such stealing or receiving is in progress, and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting.

In every such case the Police-officer seizing the things shall send written notice of their seizure and detention to the nearest custom-house; and, immediately after the dismissal of the complaint or the conclusion of the enquiry or trial, he shall cause such things to be conveyed to, and deposited at, the nearest custom-house, to be there proceeded against according to law.

When seizure
or arrest is
made, reason
in writing to
be given.

181. When anything is seized, or any person is arrested, under this Act, the officer or other person making such seizure or arrest shall, on demand of the person in charge of the thing so seized, or of the person so arrested, give him a statement in writing of the reason for such seizure or arrest.

Adjudication
of confis-
cations and
penalties.

182. In every case, except the cases mentioned in section 167, Nos. 26, 72 and 74 to 76, both inclusive, in which, under this Act, anything is liable to confiscation or to increased rates of duty;

or any person is liable to a penalty,

such confiscation, increased rate of duty or penalty may be adjudged—

- (a) without limit, by a Deputy Commissioner or Deputy Collector of Customs, or a Customs-collector;
- (b) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased duty not exceeding one hundred rupees, by an Assistant Commissioner or Assistant Collector of Customs;
- (c) up to confiscation of goods not exceeding fifty rupees in value, and imposition of penalty or increased duty not exceeding ten rupees, by such other subordinate officers of Customs as the Local Government may, from time to time, empower in that behalf in virtue of their office:

Provided that the Local Government may, in the case of any officer per-

(Chapter XVII.—Procedure relating to Offences, Appeals, etc. Secs.
183-188.)

forming the duties of a Customs-collector, limit his powers to those indicated in clause (b) or in clause (c) of this section, and may confer on any officer by name, or in virtue of his office, the powers indicated in clauses (a), (b) or (c) of this section.

183. Whenever confiscation is authorised by this Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit.

Option to pay fine in lieu of confiscation.

184. When anything is confiscated under section 182, such thing shall thereupon vest in Her Majesty.

On confiscation, property to vest in Her Majesty.

The officer adjudging confiscation shall take and hold possession of the thing confiscated, and every officer of Police, on the requisition of such officer shall assist him in taking and holding such possession.

185. If any vessel actually departs without a port-clearance, or after failing to bring-to when required at any station appointed under section 17, the penalty to which the master of such vessel is liable may be adjudged by the Chief Customs-officer of any customs-port to which such vessel proceeds, or in which she is, and, in the case of Aden, by such officer as the Governor of Bombay in Council appoints in this behalf.

Levy of penalty for failure to bring-to.

A certificate of such departure or failure to bring-to when required, purporting to be signed by the Chief Customs-officer of the port from which the vessel is stated to have so departed, shall be *prima facie* proof of the fact so certified.

186. The award of any confiscation, penalty or increased rate of duty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law.

Penalty under Act not to interfere with punishment under other law.

187. All offences against this Act, other than those cognizable under section 182 by officers of Customs, may be tried summarily by a Magistrate.

Offences not specially provided for how tried.

188. Any person deeming himself aggrieved by any decision or order passed by an officer of Customs under this Act may, within three months from the date of such decision or order, appeal therefrom to the Chief Customs-authority, or, in such cases as the Local Government directs, to any officer of Customs not inferior in rank to a Customs-collector and empowered in that behalf by name or in virtue of his office by the Local Government.

Appeal from subordinate to Chief Customs-authority.

Such authority or officer may thereupon make such further enquiry and pass such order as he thinks fit, confirming, altering or annulling the decision or order appealed against :

(Chapter XVII.—*Procedure relating to Offences, Appeals, etc.* Secs.
189-192.)

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation, penalty or rate of duty than has been adjudged against him in the original decision or order.

Every order passed in appeal under this section shall, subject to the power of revision conferred by section 191, be final.

Deposit,
pending ap-
peal, of duty
demanded.

189. Where the decision or order appealed against relates to any duty or penalty leviable in respect of any goods, the owner of such goods, if desirous of appealing against such decision or order, shall, pending the appeal, deposit in the hands of the Customs-collector at the port where the dispute arises the amount demanded by the officer passing such decision or order.

When delivery of such goods to the owner thereof is withheld merely by reason of such amount not being paid, the Customs-collector shall, upon such deposit being made, cause such goods to be delivered to such owner.

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Customs-collector shall return such amount or portion (as the case may be) to the owner of such goods on demand by such owner.

Power to
remit penalty
or confiscation.

190. If, upon consideration of the circumstances under which any penalty, increased rate of duty or confiscation has been adjudged under this Act by an officer of Customs, the Chief Customs-authority is of opinion that such penalty, increased rate or confiscation ought to be remitted in whole or in part, or commuted, such Authority may remit the same or any portion thereof, or may, with the consent of the owner of any goods ordered to be confiscated, commute the order of confiscation to a penalty not exceeding the value of such goods.

Revision by
Local Gov-
ernment.

191. The Local Government may, on the application of any person aggrieved by any decision or order passed under this Act by any officer of Customs or Chief Customs-authority, and from which no appeal lies, reverse or modify such decision or order.

Goods on
which
penalty in-
curred not to
be removed
till payment.

192. When any fine, penalty or increased rate of duty is leviable under this Act, the goods in respect of which such fine, penalty or rate is leviable shall not be removed by the owner until such fine, penalty or rate is paid.

Other goods
of person
liable to fine
or penalty
may be
detained.

If any person has become liable to any such fine, penalty or rate in respect of any goods, the Customs-collector may detain any other goods belonging to such person passing through the custom-house until such fine, penalty or rate is paid.

(Chapter XVII.—*Procedure relating to Offences, Appeals, etc.* Sec. 193.

Chapter XVIII.—*Miscellaneous.* Secs. 194-197.)

193. When a penalty or increased rate of duty is adjudged against any person under this Act by any officer of Customs, such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge, or in the charge of any other officer of Customs.

Enforcement
of payment
of penalty.

When an officer of Customs who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realize the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered; and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself.

CHAPTER XVIII.

MISCELLANEOUS.

194. Any officer of Customs may open any package, and examine any goods brought by sea to, or shipped or brought for shipment at, any customs-port.

Power to
open pack-
ages and ex-
amine goods.

195. The Customs-collector may, on the entry or clearance of any goods or at any time while such goods are being passed through the custom-house, take samples of such goods, for examination or for ascertaining the value thereof on which duties are payable, or for any other necessary purpose.

Power to take
samples of
goods.

Every such sample shall, if practicable, be at the option of the owner either restored to him, or sold and the proceeds accounted for to him.

196. The unshipping, carrying, shipping and landing of all goods, and the bringing of them to the proper place for examination or weighing, and the putting of them into and out of the scales, and the opening, unpacking, bulking, sorting, lotting, marking and numbering of goods, where such operations are necessary or permitted,

Owner to pay
expense inci-
dental to
compliance
with Cus-
toms-law.

and the removing of goods to, and the placing of them in, the proper place of deposit,

shall be performed by or at the expense of the owner of such goods.

197. No owner of goods shall be entitled to claim from any officer of Customs compensation for any loss or damage occurring to such goods at any time while they remain or are lawfully detained in any custom-house, or on any custom-house wharf, or under charge of any officer of Customs, unless it

No compen-
sation for loss
or injury ex-
cept on proof
of neglect or
wilful act.

(Chapter XVIII.—Miscellaneous. Secs. 198-203.)

be proved that such loss or damage was occasioned by the neglect or wilful act of such officer of Customs.

Notice of proceedings.

198. No proceeding other than a suit shall be commenced against any person for anything purporting to be done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof ; or

Limitation.

after the expiration of three months from the accrual of such cause.

Wharfage-fees.

199. The Chief Customs-authority may from time to time fix the period after the expiration of which goods left on any custom-house wharf, or other authorized landing-place or part of the custom-house premises, shall be subject to payment of fees, and the amount of such fees.

Duplicates of documents may be granted on payment of fee.

200. A duplicate of any certificate, manifest, bill or other custom-house document may, on payment of a fee not exceeding ten rupees, be furnished, at the discretion of the Customs-collector, to any person applying for the same, if the Customs-collector is satisfied that no fraud has been committed or is intended by the applicant.

Amendment of documents.

201. Except in the cases provided for by sections 36, 55, 63 and 94, the Customs-collector may in his discretion, upon payment of one rupee, authorize any document, after it has been entered and recorded in the custom-house, to be amended.

Custom-house agents.

202. No person authorized to act as an agent for the transaction of any business relating to the entrance or clearance of any vessel, or the import or export of goods or baggage, shall so act in any custom-house, unless such authorization is approved by the Customs-collector.

Such officer may require any person so authorized to give a bond with sufficient security, in any sum not exceeding five thousand rupees, for his faithful behaviour as regards the custom-house regulations and officers.

Such officer may, in case of misbehaviour of the person so authorized, suspend or withdraw such approval, but an appeal against every such suspension or withdrawal shall lie to the Chief Customs-authority, whose decision thereon shall be final.

Every appeal under this section shall be made within one month of the suspension or withdrawal.

Agent to produce authority if required.

203. When any person applies to any officer of Customs for permission to transact any specified business with him on behalf of any other person, such officer may require the applicant to produce a written authority from the person on whose behalf such business is to be transacted, and in default of the production of such authority may refuse such permission.

The clerk, servant or agent of any person or mercantile firm may transact business generally at the custom-house on behalf of such person or firm: Provided that the Customs-collector may refuse to recognize such clerk, servant or agent unless such person or a member of such firm identifies such clerk, servant or agent to the Customs-collector as empowered to transact such business, and deposits with the Customs-collector an authority in writing duly signed, authorizing such clerk, servant or agent to transact such business on behalf of such person or firm.

204. All rules made under this Act shall be notified in the official Gazette, and shall thereupon have the force of law. Rules to be notified.

All such rules for the time being in force shall be collected, arranged and published¹ at intervals not exceeding two years, and shall be sold to the public at a reasonable price.

205. Any notification made by any authority under powers conferred by this Act may be cancelled in like manner by the same authority. Cancellation of notifications.

206. If in any case relating to the removal of goods from a warehouse without payment of duty, the person offending be an officer of Customs not acting in execution of his duty, and be prosecuted to conviction by the owner of such goods, no duty shall be payable in respect of such goods. For any damage so occasioned by such officer, the Customs-collector shall, with the sanction of the Chief Customs-authority, make due compensation to such owner. Remission of duty and compensation to owner in certain cases.

207. Nothing in this Act shall affect any law² for the time being in force relating to the Commissioners for making improvements in the Port of Calcutta or the Trustees of the Port of Bombay³ [or any like body hereafter created for any other port.] Saving of Calcutta Port Commissioners' and Bombay Port Trust Acts.

¹ For compilations published as directed by this section by—

(1) Bengal, *see* rules under Act, corrected up to 31st December, 1896, published under authority of the Board of Revenue;

(2) Bombay, *see* rules under Act, and Standing Orders by the Commissioner of Customs, brought down to 29th February, 1896;

(3) Burma, *see* the Burma Sea Customs Manual, corrected up to 1st October, 1897;

(4) Madras, *see* rules under Act, corrected up to 31st January, 1898.

² *See* the Madras Harbour Trust Act, 1885 (II of 1886) [printed, Madras Code, Ed. 1888, p. 724], the Bombay Port Trust Act, 1879 (VI of 1879) [printed, Bombay Code, Vol. II, Ed. 1896, p. 377], the Karachi Port Trust Act, 1886 (VI of 1886) [printed, Bombay Code, Vol. III, Ed. 1896, p. 104], and the Aden Port Trust Act, 1888 (V of 1888) [printed, Bombay Code, Vol. III, Ed. 1896, p. 399], the Chittagong Port Commissioners Act, 1887 (IV of 1887) [printed, Bengal Code, Vol. II, Ed. 1890, p. 830], the Calcutta Port Act, 1890 (III of 1890) and the Rangoon Port Commissioners Act, 1879 (XV of 1879) [printed, Burma Code, Ed. 1889, p. 130].

³ These words were substituted for the word "respectively" by the Excise and Sea Customs Law Amendment Act, 1885 (IX of 1885), s. 6, printed, General Acts, Vol. V.

(Schedule.—Part I.—Acts repealed. Schedule.—Part II.—Forms.)

SCHEDULE.

PART I.

Acts of the Governor General of India in Council.

Number and year.	Title.	Extent of repeal.
XXI of 1856 . .	An Act to consolidate and amend the law relating to the Abkari Revenue in the Presidency of Fort William in Bengal.	Section 8. Sections 10 to 15, both inclusive, the last sentence of section 16 and the form of bond annexed to the Act.
VI of 1863 . .	An Act to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India.	The whole.
X of 1868 . .	An Act to amend the Consolidated Customs Act.	The whole.
XVII of 1869 . .	An Act to shorten the time for landing cargo.	The whole.
XIV of 1871 . .	An Act for the further amendment of the Consolidated Customs Act.	The whole.
VI of 1873 . .	An Act to amend the law relating to the Transhipment of goods imported by steamer, and for other purposes.	The whole.
XVI of 1875 . .	An Act to amend the law relating to Customs Duties, and for other purposes.	Sections 5, 6, 7 and 12.

PART II.

Forms.

A.

FORM OF BOND FOR IMPORT-DUTY.

(See section 92.)

Bond.

No. 18 .

We, A. B.,

now of

; and C. D.,

of the same place, are jointly and severally bound to Her Majesty's Secretary of State for India in Council in the sum of Government rupees

(Schedule.—Part II.—Forms.)

to be paid to the said Secretary of State in Council, for which payment we jointly and severally bind ourselves and our legal representatives.

(Date)

(Signed) ()

The above bounden _____ having applied to the
officer in charge of the Custom-house at _____
for and obtained permission to lodge in the warehouse _____ for a
period of _____ the following goods, that is to say—
imported by sea from _____ on board of the
ship _____ and entered in the Custom-house Books
as No. _____ of the Register of Goods imported by Sea ;

The condition of this Bond is that

if the _____, or their legal representatives, shall observe all the rules prescribed in the Sea Customs Act, 1878, to be observed by owners of goods warehoused, and by persons obtaining permission to warehouse goods under the provisions thereof ;

And if the said _____, or their legal representatives, shall pay to the officer in charge of the Custom-house at the port of _____

all dues, whether Customs-duties, warehouse-dues, rent or other lawful charges which shall be demandable on the said goods, or on account of penalties incurred in respect to them, within from the date of this Bond, or within such further time as the Chief Customs-authority of shall allow in that behalf, together with interest on every such sum at the rate of six per cent. per annum from the date of demand thereof being made in writing by the said officer in charge of the Custom-house ;

And if, within the term so fixed or enlarged, the said goods, or any portion thereof, having been removed from the said warehouse for home consumption or re-exportation by sea, the full amount of all Customs-duties, warehouse-dues, rent and other lawful charges, penalties and interest demandable as aforesaid shall have been first paid on the whole of the said goods ;

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in full force.

(Date)

(Signed) ()

(Schedule.—Part II.—Forms.)

B.

FORM OF BONDED WAREHOUSE WARRANT.

(See section 96.)

I do hereby certify that _____ have deposited
 in the Warehouse of _____ the undermentioned goods
 _____, which goods, the _____ engage on demand, after payment
 of rent and incidental charges and Government dues or customs chargeable
 thereon, to deliver to the said _____ or their
 assigns, or to the holder of this warrant to whom it may be transferred by
 endorsement.

C.

FORM OF BOND FOR THE REMOVAL OF SPIRIT FROM A LICENSED DISTILLERY.

(See sections 144 and 152.)

We,

_____ are jointly and severally bound to Her Majesty's Secretary of
 State for India in Council in the sum of Government rupees _____ to be paid
 to the said Secretary of State in Council, for which payment we jointly and
 severally bind ourselves and our legal representatives.

Dated this _____ day of _____ 18 _____.

(Signed) _____)

The above bounden _____ being indebted to Her Majesty's
 Secretary of State for India in Council in the sum of Government rupees _____,
 being the amount of duty payable at the rate of rupees _____ per imperial
 gallon London proof, for _____ gallons of _____ (or for _____ gallons
 of proof spirit used in the preparation of _____ dozens of bottles, or
 gallons of cordials and liquors, as specified in the annexed schedule) manufac-
 tured at _____, which the said _____ have been allowed to
 remove thence for exportation by sea, subject to the provisions of the Sea
 Customs Act, 1878, without having paid such duty.

(Schedule—Part II.—Forms.)

The condition of this obligation is that, if the above bounden _____, or their legal representatives, shall, at the expiration of four calendar months from the date of this obligation, pay or cause to be paid to the said Secretary of State in Council duty at the rate of _____ rupee per imperial gallon of proof spirit for all or any portion of the abovementioned _____ which shall not have been then exported by sea to a Foreign Port, subject to the aforesaid provisions (of which exportation, if any, due proof shall be given), or passed for local consumption on payment of duty, then this bond shall be void; otherwise the same shall remain in full force.

Signed in the presence of

Place

Date _____

If the bond be for cordials and other liquors under section 152, add—

Schedule.

Description of cordials and liquors.	Quantity in bottles or gallons.	Quantity of proof spirit.
1	2	3

THE INDIAN ARMS ACT, 1878.

CONTENTS.

PREAMBLE.

I.—Preliminary.

SECTIONS.

1. Short title.
Local extent.
Savings.
2. Commencement.
3. Repeal of enactments.
4. Interpretation-clause.

II.—Manufacture, Conversion and Sale.

5. Unlicensed manufacture, conversion and sale prohibited.

III.—Import, Export and Transport.

6. Unlicensed importation and exportation prohibited.
Importation and exportation of arms and ammunition for private use.
7. Sanction of Local Government required to warehousing of arms, etc.
8. [*Repealed.*]
9. [*Repealed.*]
10. Power to prohibit transport.
Transshipment of arms.
11. Power to establish searching stations.
12. Arrest of persons conveying arms, etc., under suspicious circumstances.
Procedure where arrest made by person not Magistrate or Police-officer.

IV.—Going armed and possessing Arms, etc.

13. Prohibition of going armed without license.
14. Unlicensed possession of fire-arms, etc.
15. Possession of arms of any description without license prohibited in certain places.
16. Arms, of which possession has become unlawful, to be deposited at police-station.

V.—Licenses.

17. Power to make rules as to licenses.
18. Cancelling and suspension of license.

VI.—Penalties.

19. For breach of sections 5, 6, 10, 13 to 17.
20. For secret breaches of sections 5, 6, 10, 14 and 15.
For concealing arms, etc.
21. For breach of license.
22. For knowingly purchasing arms, etc., from unlicensed person.
For delivering arms, etc., to person not authorised to possess them.

(I.—Preliminary. Sec. 1.)

SECTIONS.

23. Penalty for breach of rule.
24. Power to confiscate.

VII.—Miscellaneous.

25. Search and seizure by Magistrate.
26. Seizure and detention by Local Government.
27. Power to exempt.
28. Information to be given regarding offences.
29. Sanction required to certain proceedings under section 19, clause (f).
30. Searches in the case of offences against section 19, clause (f), how conducted.
31. Operation of other laws not barred.
32. Power to take census of fire-arms.
33. Notice and limitation of proceedings.

THE FIRST SCHEDULE.—ENACTMENTS REPEALED.

THE SECOND SCHEDULE. [*Repealed.*]ACT No. XI OF 1878.¹

[15th March, 1878.]

An Act to consolidate and amend the law relating to Arms,
Ammunition and Military Stores.

WHEREAS it is expedient to consolidate and amend the law relating to arms, ammunition and military stores ; It is hereby enacted as follows :—

I.—Preliminary.

1. This Act may be called the Indian Arms Act, 1878 ; and it extends to the whole of British India. ²

Short title.
Local extent.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V, p. 650 ; for discussions in Council, see *ibid*, 1877, Supplement, pp. 3016 and 3030 ; *ibid*, 1878, Supplement, pp. 435 and 453.

This Act has been declared in force in Upper Burma generally (except the Shan States), see the Upper Burma Laws Act, 1886 (XX of 1886), s. 6 (Burma Code, Ed. 1889, p. 364) ; and in the Santhál Parganas, see the Santhál Parganas' Settlement Regulation (III of 1872) as amended by the Santhál Parganas' Laws Regulation, 1886 (III of 1886), s. 3 (a) (Bengal Code, Vol. I, Ed. 1889, p. 597).

It has been declared, by notification under s. 3(a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, to be in force in the Districts of Hazáribágh, Lohárdaga and Mánbhūm, and in Pargana Dhálbhūm and the Kolhán in the District of Singhbūm—see Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamanu, which was separated in 1894.

It has been extended, by notification under s. 5 of the last-mentioned Act, to British Baluchistan, with certain exceptions, see Gazette of India, 1895, Pt. II, p. 921.

As to the trial in a Presidency-town of offences against the Act, see the Code of Criminal Procedure, 1898 (Act V of 1898), s. 184.

A license granted under the Indian Explosives Act, 1884 (IV of 1884), for the manufacture, possession, sale, transport or importation of an explosive may be given the effect of a like license granted under the Indian Arms Act, 1878 (XI of 1878), see Act IV of 1884, s. 15, printed, General Acts, Vol. IV.

² As to definition of "British India," see the General Clauses Act, 1897 (X of 1897), s. 1 (7).

(I.—*Preliminary. Secs. 2-4.*)

Savings.

But nothing herein contained shall apply to—

- (a) arms, ammunition or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or
- (b) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of the Government, or by a public servant or a volunteer enrolled under the Indian Volunteers Act, 1869,¹ in the course of his duty XX of 1869. as such public servant or volunteer.

Commence-
ment.

2. This Act shall come into force on such day² as the Governor General in Council by notification in the Gazette of India appoints.

Repeal of
enactments.

3. On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule. But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions and forms prescribed, under any enactment hereby repealed, shall be deemed to be respectively given, granted, made, published and prescribed under this Act.

And all such authorities, permissions, licenses and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively, or, where no such period is expressly fixed, for one year from the date² on which this Act comes into force, and shall then cease to have effect.

Interpreta-
tion-clause.

4. In this Act, unless there be something repugnant in the subject or context,—

“cannon” includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same :

“arms” includes fire-arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms :

“ammunition” includes also all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flints, gun-wads, percussion-caps, fuses and friction-tubes, all parts of ammunition and all machinery for manufacturing ammunition, but does not include lead, sulphur or saltpetre :

¹ Printed, General Acts, Vol. II, p. 112.

² Act XI of 1878 came into force on the 1st October, 1878—see Notification No. 1169, dated 27th June, 1878, Gazette of India, 1878, Pt. I, p. 389.

(II.—*Manufacture, Conversion and Sale. Sec. 5. III.—Import, Export and Transport. Sec. 6.*)

“military stores,” in any section of this Act as applied to any part of British India, means any military stores to which the Governor General in Council may from time to time, by notification in the Gazette of India, specially extend such section in such part,¹ and includes also all lead, sulphur, saltpetre and other material to which the Governor General in Council may from time to time so extend such section :

“license ” means a license granted under this Act, and “licensed ” means holding such license.

II.—Manufacture, Conversion and Sale.

5. No person shall manufacture, convert or sell, or keep, offer or expose for sale, any arms, ammunition or military stores, except under a license and in the manner and to the extent permitted thereby.

Unlicensed manufacture, conversion and sale prohibited.

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same ; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act, shall, without unnecessary delay, give to the Magistrate of the district, or to the officer in charge of the nearest police-station, notice of the sale and of the purchaser's name and address.

III.—Import, Export and Transport.

6. No person shall bring or take by sea ² or by land into or out of British India any arms, ammunition ² or military stores except under a license and in the manner and to the extent permitted by such license.

Unlicensed importation and exportation prohibited.

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition ; but the Collector of Customs or any other officer empowered by the Local Government in this behalf by name or in virtue of his office may

Importation and exportation of arms and ammunition for private use.

¹ Bird shot and bullets in excess of certain quantities have, in exercise of this power, been declared to be military stores, see Notification No. 734, dated 19th April, 1894, Gazette of India, 1894, Pt. I, p. 206.

² Arms, ammunition and military stores brought into an Indian port and declared under manifest to be consignments to another port and not transhipped, have been exempted from the operation of s. 6, see notifications issued in 1879, 1880 and 1882, Gazette of India, 1879, 1880 and 1882, Pt. I, pp. 580, 49 and 129, respectively.

Gun-wads, wire cartridges and bullets have been excluded from the operation of s. 6, see Notification No. 591, dated 29th April, 1896, Gazette of India, 1896, Pt. I, p. 299.

(III.—Import, Export and Transport. Secs. 7-12.)

at any time detain such arms or ammunition until he receives the orders of the Local Government thereon.

Explanation.—Arms, ammunition and military stores taken from one part of British India to another by sea or across intervening territory not being part of British India, are taken out of and brought into British India, within the meaning of this section.

Sanction of
Local Gov-
ernment
required to
warehousing
of arms, etc.

7. Notwithstanding anything contained in the Sea Customs Act, 1878,¹ VIII of 1878. no arms, ammunition or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the Local Government.

8. [*Levy of duties on arms, etc., imported by sea.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

9. [*Power to impose duty on imports by land.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

Power to
prohibit
transport.

10. The Governor General in Council may, from time to time, by notification in the Gazette of India,—

(a) regulate or prohibit the transport of any description of arms, ammunition or military stores over the whole of British India or any part thereof, either altogether or except under a license and to the extent and in the manner permitted by such license, and

(b) cancel any such notification.

Transship-
ment of arms.

Explanation.—Arms, ammunition or military stores transhipped at a port in British India are transported within the meaning of this section.

Power to es-
tablish
searching
stations.

11. The Local Government, with the previous sanction of the Governor General in Council, may, at any places along the boundary-line between British India and foreign territory, and at such distance within such line as it deems expedient, establish searching-posts at which all vessels, carts and baggage-animals, and all boxes, bales and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer empowered by such Government in this behalf by name or in virtue of his office.

Arrest of per-
sons convey-
ing arms,
etc., under
suspicious
circum-
stances.

12. When any person is found carrying or conveying any arms, ammunition or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him.

¹ Printed, *supra*, p. 168.

(IV.—*Going armed and possessing Arms, etc. Secs. 13-16. V.—Licenses. Sec. 17.*)

Any person so apprehended, and any arms, ammunition or military stores so taken by a person not being a Magistrate or Police-officer, shall be delivered over as soon as possible to a Police-officer.

Procedure where arrest made by person not Magistrate or Police-officer.

All persons apprehended by, or delivered to, a Police-officer, and all arms and ammunition seized by or delivered to any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

IV.—Going armed and possessing Arms, etc.

13. No person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby.

Prohibition of going armed without license.

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, Police-officer or other person empowered by the Local Government in this behalf by name or by virtue of his office.

14. No person shall have in his possession or under his control any cannon or fire-arms, or any ammunition or military stores, except under a license and in the manner and to the extent permitted thereby.¹

Unlicensed possession of fire-arms, etc.

15. In any place to which section 32, clause 2, of Act No. XXXI of 1860² applies at the time this Act comes into force or to which the Local Government, with the previous sanction of the Governor General in Council, may by notification in the local official Gazette specially extend this section, no person shall have in his possession any arms of any description, except under a license and in the manner and to the extent permitted thereby.

Possession of arms of any description without license prohibited in certain places.

16. Any person possessing arms, ammunition or military stores, the possession whereof by him has in consequence of the cancellation or expiry of a license or by the issue of a notification under section 15, become unlawful, shall deposit the same without unnecessary delay with the officer in charge of the nearest police-station.

Arms of which possession has become unlawful to be deposited at police-station.

If the owner of anything deposited under this section does not within three years from the date on which such thing is so deposited produce a license authorising him to possess the same and apply for delivery of the same, such thing shall be forfeited to Her Majesty.

V.—Licenses.

17. The Governor General in Council may from time to time, by notification in the Gazette of India, make rules to determine the officers by whom, the

Power to make rules as to licenses.

¹ The second, third and fourth paras. of s. 14 were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

² Act XXXI of 1860 was repealed by s. 3 of this Act.

(V.—*Licenses.* Sec. 18.)

form in which, and the terms and conditions¹ on and subject to which, any license shall be granted ; and may by such rules among other matters—

- (a) fix the period for which such license shall continue in force ;
- (b) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause 2, of Act No. XXXI of 1860² applies at the time this Act comes into force, or in respect of any such license other than a license for possession granted in any other place ;
- (c) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the Local Government may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so ;
- (d) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6 ;
- (e) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered ; and
- (f) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammunition or military stores covered by the same when called upon by an officer of Government so to do.

18. Any license may be cancelled or suspended—

- (a) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a District, or Commissioner of Police in a Presidency-town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such license ; or
- (b) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act ; and

Cancelling
and suspension of
license.

¹ For conditions annexed to licenses to import arms, etc., into Aden, see Notification No. 1016, dated 26th May, 1879, Gazette of India, 1879, Pt. I, p. 381.

² Act XXXI of 1860 was repealed by s. 3 of this Act.

(VI.—Penalties. Secs. 19-21.)

the Local Government may at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration.

VI.—Penalties.

¹ 19. Whoever commits any of the following offences (namely) :—

For breach of sections 5, 6, 10, 13 to 17.

- (a) manufactures, converts or sells, or keeps, offers or exposes for sale, any arms, ammunition or military stores in contravention of the provisions of section 5 ;
- (b) fails to give notice as required by the same section ;
- (c) imports or exports any arms, ammunition or military stores in contravention of the provisions of section 6 ;
- (d) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10 ;
- (e) goes armed in contravention of the provisions of section 13 ;
- (f) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section 14 or section 15 ;
- (g) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (c), he is required to keep ;
- (h) intentionally fails to exhibit anything which, by a rule made under section 17, clause (c), he is required to exhibit ; or
- (i) fails to deposit arms, ammunition or military stores, as required by section 14 or section 16 ;

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

20. Whoever does any act mentioned in clause (a), (c), (d) or (f) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code,² or to any person employed upon a railway or to the servant of any public carrier,

For secret breaches of sections 5, 6, 10, 14 and 15.

and whoever, on any search being made under section 25, conceals or attempts to conceal any arms, ammunition or military stores,

For concealing arms, etc.

shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

21. Whoever, in violation of a condition subject to which a license has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with

For breach of license.

¹ Offences under this section are bailable, *see* Sch. II, Code of Criminal Procedure, 1898 (Act V of 1898), third last entry.

² Printed, General Acts, Vol. I, Ed. 1898, p. 240.

(VI.—Penalties. Secs. 22-24. VII.—Miscellaneous. Secs. 25-26.)

imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

For knowingly purchasing arms, etc., from unlicensed person.

For delivering arms, etc., to person not authorised to possess them.

Penalty for breach of rule.

Power to confiscate.

22. Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorised under the proviso to section 5 to sell the same ; or

delivers any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorised to possess the same,

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

23. Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

24. When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any vessel, cart or baggage-animal used to convey the same, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale, shall be confiscated.

VII.—Miscellaneous.

Search and seizure by Magistrate.

25. Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose,

or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief, may cause a search to be made of the house or premises occupied by such person or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered in this behalf by name or in virtue of his office by the Local Government.

Seizure and detention by

26. The Local Government may at any time order or cause to be seized any arms, ammunition or military stores in the possession of any person,

(VII.—*Miscellaneous. Secs. 27-29.*)

notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety. Local Government.

27. The Governor General in Council may from time to time, by notification¹ published in the Gazette of India,— Power to exempt.

- (a) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act; and
- (b) cancel any such notification, and again subject the persons or things or the part of British India comprised therein to the operation of such prohibition or direction.

28. Every person aware of the commission of any offence punishable under this Act shall in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police-officer or Magistrate, and Information to be given regarding offences.

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest Police-officer regarding any box, package or bale in transit which he may have reason to suspect contains arms, ammunition or military stores in respect of which an offence against this Act has been or is being committed.

29. Where an offence punishable under section 19, clause (f), has been committed within three months from the date² on which this Act comes into force in any province, district or place to which section 32, clause 2, of Act XXXI of 1860³ applies at such date, or where such an offence has been com- Sanction required to certain proceedings under section 19, clause (f).

¹ For the notification issued under this section, together with rules by the Governor General under ss. 4, 9, 11 of the Act, see No. 518, dated 6th March, 1879, Gazette of India, 1879, Pt. I, p. 141.

A revised edition of this notification corrected up to the 9th July, 1897 has been published by the Home Department of the Government of India.

For order exempting residents of Pondichery being Europeans, from payment of import duty on guns, when holding passports from their own authorities, see Notification No. 2257, Gazette of India, 1879, Pt. I, p. 782.

For order exempting Gurkha pensioners from all prohibitions and directions in respect of Kukris, see Notification No. 1201, Gazette of India, 1891, Pt. I, p. 430.

For order withdrawing part of British India from operation of any prohibition or direction contained in the Act, see Notification No. 496, dated, April 14, 1893, Gazette of India, 1893, Pt. I, p. 201.

² The 1st October, 1878.

³ Act XXXI of 1860 was repealed by s. 3 of this Act.

(VII.—*Miscellaneous. Secs. 30-33.*)

mitted in any part of British India not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the District or, in a Presidency-town, of the Commissioner of Police.

Searches in the case of offences against section 19, clause (f), how conducted.

30. Where a search is to be made under the Code of Criminal Procedure or the Presidency Magistrates Act, 1877,¹ in the course of any proceedings instituted in respect of an offence punishable under section 19, clause (f), such search shall, notwithstanding anything contained in the said Code or Act,¹ be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf, and not otherwise.

Operation of other laws not barred.

31. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by this Act: Provided that no person shall be punished twice for the same offence.

Power to take census of fire-arms.

32. The Local Government may from time to time, by notification in the local official Gazette, direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Notice and limitation of proceedings.

33. No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause.

¹ For the references to Act X of 1872 and the Presidency Magistrates Act, 1877 (IV of 1877), read now Act V of 1898

(The First Schedule.)

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 3.)

Number and year.	Title.	Extent of repeal.
XVIII of 1841	An Act for consolidating and amending the enactments concerning the exportation of Military Stores.	So much as has not been repealed.
XXX of 1854	An Act to provide for the levy of duties of Customs in the Arracan, Pegu, Martaban and Tenasserim Provinces.	In the preamble, the words "and that the exportation of munitions of war from any of these Provinces into foreign States should be prohibited." Section 11.
XXXI of 1860	An Act relating to the manufacture, importation and sale of Arms and Ammunition and for regulating the right to keep and use the same, and to give power of disarming in certain cases.	So much as has not been repealed.
VI of 1866	An Act to continue Act No. XXXI of 1860 (relating to the manufacture, importation and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases) and for other purposes.	The whole.
III of 1872	The Santhál Parganas' Settlement Regulation.	So much of the schedule ² as relates to Act XXXI of 1860 and Act VI of 1866.
² IX of 1874	The Arakan Hills District Laws Regulation, 1874.	So much of the schedule as relates to Act XVIII of 1841.
⁴ XV of 1874	An Act for declaring the local extent of certain enactments and for other purposes.	So much of the first schedule as relates to Act XVIII of 1841.

THE SECOND SCHEDULE.

ARMS, ETC., LIABLE TO DUTY.

[Rep. by the Repealing and Amending Act, 1891 (XII of 1891).]

¹ The rest of Act XXX of 1854 was repealed by the Upper Burma Laws Act, 1888 (XX of 1888), s. 5, printed, Burma Code, Ed. 1889.

² A new schedule has since been substituted for the schedule here mentioned—Bengal Code, Vol. I, Ed. 1889, p. 605.

Printed, Burma Code, Ed. 1889, p. 353.

⁴ Printed, General Acts, Vol. II; Ed. 1898, p. 493.

ACT No. III OF 1879.¹

[8th March, 1879.]

An Act to authorize the Destruction of Useless Records.

Preamble.

WHEREAS it is expedient to provide for the destruction or other disposal of useless records, books and papers in Courts and Revenue-offices; It is hereby enacted as follows:

Short title.

1. This Act may be called the Destruction of Records Act, 1879.

Local extent.
Commence-
ment.

It extends to the whole of British India;² and

It shall come into force at once.

Power to
High Court
to make rules
for disposal
of records, etc.

2. The High Court may, from time to time, makes rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of such High Court, or the Courts of civil and Criminal jurisdiction subordinate thereto, as the High Court may consider useless or unworthy of being permanently preserved.

So far as regards his own Court, the Court of Small Causes in Rangoon and the Courts of the Magistrates within the local limits of his ordinary civil jurisdiction, the Recorder of Rangoon shall, for the purposes of this section, be deemed to be a High Court.

Similar power
to Presidency
High Courts
with respect
to documents
in Insolvency
Courts and
Administrator
General's
office.

3. Each of the High Courts of Judicature at Fort William, Madras and Bombay may, from time to time, make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or being in the custody of—

(a) the local Court for the relief of Insolvent Debtors held under the provisions of the eleventh and twelfth of Victoria, chapter twenty-one;³

(b) the local Administrator General,

11 & 12 Vic
c. 21.

¹ For the Statement of Objects and Reasons, *see* Gazette of India, 1878, Pt. V, p. 372; for discussions in Council, *see ibid.*, 1878, Supplement, pp. 1601 and 1657; *ibid.*, 1879, Supplement, pp. 175 and 293.

² This Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, p. 467, to be in force in the following Scheduled Districts in the Chutiá Nágpur Division, namely:—

the Districts of Hazáribagh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894.

The Act has been declared in force in—

the Santhál Parganas by the Santhál Parganas' Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas' Laws Regulation, 1886 (III of 1886);

Upper Burma generally, except the Shan States (ss. 2, 4, 5, 7 and 8), by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6, as amended by Act XVIII of 1888, s. 7.

³ *See* "the Indian Insolvency Act, 1848," printed in the Collection of Statutes relating to India, Vol. I, p. 323.

Act I of 1879 (Stamps) has not been republished in this volume, as it is likely soon to be superseded. For Act I of 1879, as modified up to 1st November, 1895, see the 8vo edition published by the Legislative Department.

(Secs. 4-8.)

as the High Court may consider useless or unworthy of being permanently preserved.

4. The Chief Controlling Revenue-authority may from time to time make rules respecting the disposal, by destruction or otherwise, of such records, books and papers belonging to or in the custody of the Revenue Courts and Offices as it may consider useless or unworthy of being permanently preserved.

Similar power to Chief Controlling Revenue-authority.

5. All rules made under this Act shall, after being confirmed by the Local Government and sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

Rules when to have force of law.

6. All rules and orders heretofore made by a Local Government, a High Court or a Chief Controlling Revenue-authority for the destruction or other disposal of useless records, books and papers belonging to or in the custody of any Court or Revenue-office shall be deemed to have had the force of law from the date on which they were made, and all such rules now in force shall continue to have the force of law until they are rescinded by rules made under this Act; and no suit or other proceeding shall be instituted, maintained or continued against any person for the disposal, by destruction or otherwise, of any records, books or papers in accordance with any such rules or with any order made by a Local Government, High Court or Chief Controlling Revenue-authority.

Validation of rules as to destruction of documents.

Bar of suits.

7. In this Act "Chief Controlling Revenue-authority" means, in the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces - the Board of Revenue: in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner: in Sindh—the Commissioner: in the Punjab—the Financial Commissioner; and elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf by name or in virtue of his office.

Interpretation-clause.

8. Nothing herein contained shall be deemed to authorize the destruction of any document which, under the provisions of any law for the time being in force, is to be kept and maintained.

Saving of documents kept under provision of law.

9. [*Repeal of enactments.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

THE SCHEDULE.

ENACTMENTS REPEALED.

[*Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*]

ACT No. V OF 1879.¹

[22nd March, 1879.]

An Act to amend the Presidency Banks Act, 1876.

Preamble.

WHEREAS it is expedient to amend the Presidency Banks Act, 1876,² in manner hereinafter appearing ; It is hereby enacted as follows :—

Short title.
Commence-
ment.

1. This Act may be called the Presidency Banks Act, 1879 ; and it shall come into force on the first day of May, 1879.

Amendment
of Act XI of
1876, section
28.

2. To the first clause of section 28 of the Presidency Banks Act, 1876,² the following proviso shall be added, that is to say :—

“Provided that no person shall be chosen to be President or Vice-President twice in succession.”

Amendment
of section 34
of same Act.
Amendments
of section 36.

3. In the same Act, section 34, before the words “no khazánci,” the words “without the previous sanction of the Board,” shall be inserted.

4. In the same Act, section 36, clause (a), sub-clause (4), after the words “municipal body,” the words “or any body of Commissioners for making improvements in any port or of trustees of any port” shall be inserted.

In the same section, the words “in the case of the Bank of Madras” shall be omitted in both the places in which they occur.

In the same section, after clause (m), the following clause shall be inserted, that is to say :—“(m) the borrowing of money in India for the purposes of the Bank’s business, and the giving of security for money so borrowed by pledging assets or otherwise.”

Amendment
of section 37.

5. In section 37 of the same Act, for clause (d), the following shall be substituted, that is to say :—

“(d) Nor shall they (except upon the security mentioned in section 36, paragraph a, Nos. 1 to 5 inclusive)—

“discount bills for any individual or partnership-firm for an amount exceeding in the whole at any one time such sum as may be prescribed by the bye-laws for the time being in force, or

¹ For the Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 162 ; for discussions in Council, *see ibid.*, 1879, Supplement, pp. 175, 307 and 349.

The Act has been declared in force in Upper Burma generally (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6, printed, Burma Code, Ed. 1889, p. 363.

This Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to be in force in the following Scheduled Districts in the Chutia Nágpur Division, namely :—

the Districts of Hazáribágh, Lohárdaga and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum—*see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894.

² Printed, General Acts, Vol. II, Ed. 1898, p. 514.

"lend or advance in any way to any individual or partnership-firm an amount exceeding in the whole at any one time such sum as may be so prescribed."

6. In section 63 of the same Act, clause (a), for the words "lent by discount of bills or otherwise to," the words "lent to or for which bills may be discounted for" shall be substituted. Amendment of section 63.

ACT No. VI of 1879.¹

[22nd March, 1879.]

An Act for the preservation of wild elephants.

WHEREAS it is expedient to provide for the preservation of wild elephants; Preamble.
It is hereby enacted as follows:—

1. This Act may be called the Elephants' Preservation Act, 1879:

Short title.

It extends to the territories now respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioners of Oudh, the Central Provinces, British Burma² and Coorg;

Local extent.

and the Local Government may, with the previous sanction of the Governor General in Council, extend it to any other local area³ by notification in the local official Gazette.

So far as regards the power to make declarations and rules, it shall come into force on the passing thereof. In other respects it shall come into force on the first day of April, 1879. Commencement.

2. The words "kills or catches elephants," in section 25, clause (i), of the Indian Forest Act, 1878,⁴ and the words "killing or catching elephants," in

Repeal.

VII of 1878.

¹ For the Statement of Objects and Reasons. *see* Gazette of India, 1878, Pt. V, p. 199; for the Preliminary Report of the Select Committee, *see ibid.*, Pt. V, p. 387; for discussions in Council, *see ibid.*, 1878, Supplement, pp. 1103, 1155; and *ibid.*, 1879, Supplement, pp. 348, 350.

² For "British Burma" now read "Lower Burma," *see* s. 4 of the Upper Burma Laws Act, 1886 (XX of 1886), printed, Burma Code, Ed. 1889. There is now no Chief Commissioner in Burma, that officer having since been created a Lieutenant-Governor by Proclamation dated 9th April, 1897, Gazette of India, 1897, Pt. I, p. 261.

³ The Act has been extended to the following places, namely:—

Kila Sukindah, in Cuttack, *see* Calcutta Gazette, 1882, Pt. I, p. 278;
the District of Mymensingh, *see* Calcutta Gazette, 1883, Pt. I, p. 416;
the Districts of Kámrup, Darrang, Naugong, Sibságar, Lakhimpur, Cachar, the Nágá Hills and the Khási and Jaintía Hills, *see* Assam Gazette, 1880, p. 340;
the Gáo Hills (with the exception of certain portions of the estates of the zamindárs of Meshpára, Bijni and Karaibári), *see* Assam Gazette, 1882, Pt. I, p. 453;
the Eastern Dvárs in the District of Goálpára, and that part of the District of Sylhet which has not been permanently settled, *see* Assam Gazette, 1883, Pt. I, p. 2; the Mokokchang Subdivision of the Nágá Hills District, *see* Notification No. 168-J., printed, Assam Gazette, 1891, Pt. II, p. 36; the Lushái Hills, *see* Gazette of India, 1898, Pt. II, p. 345, Notification No. 923-P., dated April 4, 1898.

⁴ Printed, *supra*, p. 128.

section 31, clause (j), of the same Act, shall be repealed in every local area to which this Act extends or is extended.

Killing and capture of wild elephants prohibited.

3. No person shall kill, injure or capture, or attempt to kill, injure or capture, any wild elephant unless—

- (a) in defence of himself or some other person ;
- (b) when such elephant is found injuring houses or cultivation, or upon, or in the immediate vicinity of, any main public road or any railway or canal ; or
- (c) as permitted by a license granted under this Act.

Rights of Government with respect to certain elephants and tusks.
License to kill and capture wild elephants.

¹ 4. [Every wild elephant captured, and the tusks of every wild elephant killed, by any person not licensed under this Act, shall be the property of Government.]

5. The Collector or Deputy Commissioner of any district may, subject to such rules as may for the time being be in force under this Act, grant licenses to kill, or to capture, or to kill and capture, wild elephants in such district :

Provided that no such license shall authorize any person to enter upon any land without the consent of the owner or occupier thereof.

Power of Local Government to declare what are main roads and canals, and to make rules as to licenses.

² 6. The Local Government may from time to time, subject to the control of the Governor General in Council,

declare what shall be deemed to be main public roads and canals within the meaning of this Act, and

make rules consistent with this Act for regulating—

- (a) the grant and renewal of licenses under this Act ;
- (b) the fees (if any) in money, tusks or captured elephants to be charged on such grant and renewal ;
- (c) the time during which such licenses shall continue in force ; and
- (d) the conditions (if any) on which they shall be granted.

All such declarations and rules shall be published in the local official Gazette and shall thereupon have the force of law.

Penalty for contravening section 3.

7 Whoever, in contravention of section 3, kills, injures or captures, or attempts to kill, injure or capture, any wild elephant, shall be punished with fine which may extend to five hundred rupees for each elephant concerned ;

¹ S. 4 has been substituted by the Elephants' Preservation Act (1879) Amendment Act, 1883 (II of 1883). printed, General Acts, Vol. IV.

² For rules under this section in—

Burma . . . see Burma Rules Manual, Ed. 1897, p. 49 ;
Assam . . . see Assam List of Local Rules and Orders, Ed. 1893, pp. 148-153 ;
North-Western Pro- see Notification No. ^{217P.}/₄₅₆, dated May 5, 1886, North-Western Pro-
vinces and Oudh. vices and Oudh Gazette, Pt. I, p. 228 ;
Central Provinces see Central Provinces List of Local Rules and Orders, Ed. 1896,
p. 29.

and whoever breaks any condition contained in a license granted under this Act shall be punished with fine which may extend to five hundred rupees.

Any person convicted of a second offence under this section shall be punished with imprisonment which may extend to six months, or with fine, or with both.

When any person holding a license under this Act is convicted under this section, such license shall become void and shall be delivered up to the convicting Magistrate.

8. Any officer of Revenue or Police, or any Forest-officer, who may find any person killing, injuring or capturing, or attempting to kill, injure or capture, any wild elephant, except in the cases mentioned in section 3, clauses (a) and (b), may require him to produce and show a license granted to him under this Act.

License to be produced and shown on requisition of certain officers.

Any person who, on such request, wilfully refuses or is unable to produce and show such license as aforesaid, shall, in addition to any other punishment to which he may be liable under this Act, be punished with fine which may extend to one hundred rupees.

9. Every prosecution under this Act shall be commenced within six months from the commission of the offence in respect of which it is instituted.

Limitation of prosecution.

10. The amount or value of any fee payable under any license granted under this Act may be recovered from the licensee as if it were an arrear of land-revenue.

Recovery of fees.

ACT No. XI OF 1879.¹

[21st July, 1879.]

The Local Authorities' Loan Act, 1879.

XXIV of
1871.

WHEREAS it is expedient to re-enact the Local Public Works Loan Act, 1871, with the amendments hereinafter appearing; It is hereby enacted as follows:—

Preamble.

1. This Act may be called the Local Authorities Loan Act, 1879:

Short title.

It extends to the whole of British India,²

Local extent.

¹ The Statement of Objects and Reasons was not published, the Bill having been introduced and passed at one sitting; for proceedings with regard to the Bill, see Gazette of India, Supplement, 1879, p. 872.

² The Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to be in force in the following Scheduled Districts in the Chutia Nágpur Division, namely:—

the Districts of Hazáribágh, Lohárdaga and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, see Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894.

The Act has been extended, by notification under s. 5 of the same Act, to the whole of Upper Burma (except the Shan States), see Burma Gazette, 1888, Pt. I, p. 544.

It has been declared in force in the Santhál Parganas by the Santhál Parganas' Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas' Laws Regulation, 1886 (III of 1886).

(Secs. 2-5.)

Commence-
ment.

and shall come into force upon the passing thereof.

Repeal of Act
XXIV of
1871.

2. The Local Public Works Loan Act, 1871, is hereby repealed. But all applications, declarations, authorizations, attachments, loans and rules made under the said Act shall be deemed to have been made under this Act. XXIV of 1871.

“Local
authority.”

3. In this Act, “local authority”¹ means any body corporate, municipal committee² or other persons legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax upon any persons within any local area; and

“Funds.”

“funds,” used with reference to any local authority, includes any local or municipal fund to the control or management of which such authority is legally entitled, and any cess, rate, duty or tax which such authority is legally entitled to impose, and any property vested in such authority.

Loans for
works may
be granted on
security of
funds.

4. Any local authority desiring to obtain a loan, on the security of its funds or any portion thereof, for the carrying out of any works which it is legally authorized to carry out may, in manner provided by the rules made by the Governor General in Council under the power hereinafter conferred, apply to the Local Government for such loan.

Power to
Governor
General in
Council to
make rules.

³ 5. The Governor General in Council may, from time to time, make rules consistent with this Act as to—

- (1) the nature of the funds on the security of which loans may be made
- (2) the works for which loans may be made;
- (3) the manner of making applications for loans;
- (4) the inquiries to be made in relation to such loans, and the manner of conducting such inquiries;
- (5) the cases and the forms in which particulars of applications and proceedings, and orders thereon, shall be published;
- (6) the cases in which the Local Government may make loans without the previous sanction of the Governor General in Council, and the cases in which such previous sanction must be obtained;

¹ Cf. s. 3 (28) of the General Clauses Act, 1897 (X of 1897).

² It is not affected by the Ajmere Municipalities Regulation, 1886 (V of 1886), see s. 159.

³ For rules made under this section, see Notifications No. 15, dated January 1st, 1889, Gazette of India, 1889, Pt. I, p. 13, and No. 417, dated January 24th, 1890, *ibid.*, 1890, Pt. I, p. 67.

For rules made under this section and s. 7, see Notifications No. 16, dated January 1st, 1889, Gazette of India, 1889, Pt. I, p. 67, and No. 4105, dated August 9th, 1889, Gazette of India, 1889, Pt. I, p. 128.

The rules for the grant of loans to Local Authorities by Government, and further rules for raising loans by Local Authorities in the open market [Govt. of India Notifications, 1889, Nos. 15 and 16], came into force in Upper Burma (except the Shan States) on 16th February, 1889, see Burma Gazette, 1889, Pt. II, p. 42; see also notification set out in Burma Rules Manual, Ed. 1897, p. 52

(Secs. 6-7.)

- (7) the manner of recording and enforcing the conditions on which such loans are to be made ;
 - (8) the manner and time of making loans ;
 - (9) the inspection of any works carried out by means of loans ;
 - (10) the instalments by which loans shall be repaid, the interest to be charged on loans, and the manner and time of repaying loans and of paying the interest thereon ;
 - (11) the sum to be charged against the funds which are to form the security for the loan, as costs in effecting the loan ;
 - (12) the attachment of such securities, and the manner of disposing of or collecting them ;
 - (13) the accounts to be kept in respect of loans,
- and as to all other matters incidental to carrying this Act into effect.

All such rules shall be published in the Gazette of India.

¹ 6. If any loan made under such rules, or any interest or costs due in respect thereof, is or are not repaid according to the conditions of the loan, the Local Government may attach the funds on the security of which the loan was made. After such attachment, no person except an officer appointed in his behalf by the Local Government shall in any way deal with the attached funds ; but such officer may do all acts in respect thereof which the borrowers might have done if such attachment had not taken place, and may apply the proceeds in satisfaction of the loan and of all interest and costs due in respect thereof, and of all expenses caused by the attachment and subsequent proceedings :

Remedy by attachment if loan not repaid.

Provided that no such attachment shall defeat or prejudice any debt for which the funds attached were previously pledged in accordance with law ; but all such prior charges shall be paid out of the proceeds of the funds before any part of the proceeds is applied to the satisfaction of a liability incurred under this Act.

Attachment not to defeat prior charges legally made.

¹ 7. The Local Government, with the previous sanction of the Governor General in Council, may authorize² any local authority which might, under the provisions hereinbefore contained, have borrowed money for any work upon the security of its funds, to borrow money from any other person for such work upon such security ; and, if any such loan or the interest thereon is not duly paid, the Local Government shall, upon the application of the lender, attach such funds for his benefit in manner provided by section 6.

Local Government may authorize parties to borrow from private persons under this Act.

¹ Ss. 6 and 7 of this Act apply to money borrowed under the Local Authorities' (Emergency) Loans Act, 1897 (XII of 1897), see s. 4 of the Act.

² For rules under this section, see note 2 to s. 5, *supra*.

(Secs. 8-9.)

Power to
make rules
in regard to
such loans.

Loans not to
be effected
except under
this Act.

The Governor General in Council may, in respect of loans to be taken under this section, exercise the power conferred by section 5, so far as the same may be applicable to the case of such loans.

8. Except as provided by this Act and the rules made hereunder, no local authority shall for any purpose borrow money upon or otherwise charge its funds ; and any contract otherwise made for that purpose after the passing of this Act shall be void :

Provided that nothing herein contained shall be deemed—

- (a) to preclude the Municipality of Calcutta, Madras or Bombay, or the Trustees of the Port of Bombay, or the Commissioners for making Improvements in the Port of Calcutta, or any like body hereafter created for the Port of Madras, from exercising the borrowing powers conferred on them by any special enactment¹ now or hereafter in force ; or
- (b) to preclude any other local authority from exercising the borrowing power (if any) conferred on it by any such enactment with a view to raising money for any purpose other than the carrying out of works ;² or
- (c) to affect the power conferred on any local authority by any such enactment to charge its funds by guaranteeing the payment of interest on money to be applied to any purpose to which the funds of the local authority can legally be applied.]

Application
of Act to
loans existing
previous to
the fifth of
September,
1871.

9. The Secretary of State in Council shall be entitled to the remedy mentioned in section 6 for the recovery of any money lent by him to any local authority before the fifth day of September, 1871, and the interest due on such money ; and the Governor General in Council or the Local Government may declare that any person who before the said fifth day of September, 1871, has lent money to any local authority shall be entitled to the said remedy for the recovery of such money, or of the interest due thereon.

¹ As to the municipality of Calcutta, *see* (1) ss. 404 to 411 of the Calcutta Municipal Consolidation Act, 1888 (Bengal Act II of 1888), printed, Bengal Code, Vol. II, Ed. 1880, p. 990.

(2) City of Bombay, *see* City of Bombay Municipal Act, 1888 (III of 1888), ss. 106-110, printed, Bombay Code, Vol. III, Ed. 1896, p. 244.

(3) City of Madras, *see* City of Madras Municipal Act, 1884 (Madras Act I of 1884), ss. 209-211.

(4) Bombay Port Trust Act 1879 (Bombay Act VI of 1879), ss. 40-42, printed, Bombay Code, Vol. III, p. 392.

(5) Calcutta Port Commissioners, *see* Calcutta Ports Act, 1890 (Bengal Act III of 1890), ss. 18-27.

(6) Madras Harbour Trust, *see* Madras Harbour Trust Act, 1886 (Madras Act II of 1886), ss. 34-36, printed, Madras Code, Ed. 1888, p. 734.

² Inserted by the Local Authorities' Loans Act (1879) Amendment Act, 1885 (XV of 1885), printed, General Acts, Vol. V.

ACT No. XII of 1879.¹

[29th July, 1879.]

An Act to amend * * * *² the Registration Act, 1877, and the Limitation Act, 1877.³

[Preamble.] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

1 to 103. [*Amendment of Code of Civil Procedure.*] *Repealed by the Code of Civil Procedure (Act XIV of 1882), s. 3.*

III of 1877.

And whereas it is also expedient to amend the Indian Registration Act, 1877,⁴ in manner hereinafter appearing ; It is hereby further enacted as follows :—

104. In section 35 of the same Act, after the words “person appears”, the words “to the registering officer” shall be inserted ; and after the words “refuse to register the document”, the words “as to the person so denying appearing or dead” shall be inserted. Amendment of Act III of 1877, section 35.

105. In section 51 of the same Act, for the figures “87”, the figures “89” shall be substituted. Amendment of section 51.

106. In section 83 of the same Act, for the words “Subordinate Magistrate of the first” the words “Magistrate of the second” shall be substituted. Amendment of section 83.

107. In section 89 of the same Act, for the words “the certificate” the words “the copy” shall be substituted ; and to the same section the following paragraph shall be added, namely :— Amendment of section 89.

“Every Court granting a certificate under section 316 of the Code of Civil Procedure⁵ shall send a copy of such certificate to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable

XIV of 1882.

¹ Short title, “The Registration and Limitation Acts Amendment Act, 1879.” See the Short Titles Act, 1897 (XIV of 1897).

For the Statement of Objects and Reasons, see Gazette of India, 1878, Pt. V, p. 201 ; for the Reports of the Select Committee, see *ibid.*, 1879, Pt. V, pp. 187, 191 and 821 ; for discussions in Council, see *ibid.*, 1878, Supplement, pp. 1023, 1103 ; *ibid.*, 1879, p. 891.

² The words “the Code of Civil Procedure” were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

³ Ss. 104 to 108 of this Act are included in the Schedule to the Santhal Parganas' Laws Regulation, 1886 (III of 1886) and the same sections have been declared by notification under s. 3(a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to be in force in the following Scheduled Districts in the Chutia Nagpur Division, namely :—

the Districts of Hazáribágh, Lohardága and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum—see Gazette of India, 1881, Pt. I, p. 504. The District of Lohardága included at this time the present District of Palamau, which was separated in 1894.

As to application of this Act to other places as part of the Registration and Limitation Act, see note ¹ on p. 42, *supra*, and note ² on p. 75, *supra*.

⁴ Printed, *supra*, p. 41.

⁵ Printed, General Acts, Vol. IV.

(Sec. 108.)

Legal Practitioners.

[1879: Act XVIII.

property comprised in such certificate is situate, and such officer shall file the copy in his Book No. 1."

And whereas it is also expedient to amend the Indian Limitation Act XV of 1877,¹ in manner hereinafter appearing; It is hereby further enacted as follows:

Amendment
of Act XV of
1877, Sched-
ule II.

108. In the second schedule to the said Indian Limitation Act, 1877,— XV of 1877
for No. 161, the following shall be substituted (namely):—

<p>" 161.—For the issue of a notice under section 258 of the same Code² to show cause why the payment or adjustment therein mentioned should not be recorded as certified.</p>	<p>Twenty days³ .</p>	<p>When the payment or adjustment is made."</p>	<p>XIV of 18</p>
---	----------------------------------	---	------------------

* * * * *

and in No. 179, column three, paragraph 6, for the words "specified date) the date so specified," the words "certain date) such date" shall be substituted.

THE LEGAL PRACTITIONERS ACT, 1879.

CONTENTS.

CHAPTER I.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
- Commencement.
- Local extent.
2. Repeal of enactments.
- Saving of rules, etc.
- References to repealed enactments.
3. Interpretation-clause.

¹ Printed, *supra*, p. 75.

² This No. 161 now becomes No. 173A. and "twenty days" in the second column becomes "ninety days," see the Civil Procedure Code Amendment Act, 1883 (VII of 1883), s. 66 (1), printed, General Acts, Vol. V.

³ Printed, General Acts, Vol. IV.

⁴ S. 108, as far as it relates to articles Nos. 171, 171A, 171B and 171C of the Second Schedule to the Indian Limitation Act, 1877, were repealed by the Repealing and Amending Act, 1891 (XII of 1891), see the First Schedule, those articles, as having been part of the Limitation Act, having been previously repealed by the Civil Procedure Code Amendment Act, 1888 (VII of 1888), and a substitution made for Article No. 171C., see s. 66 of the Act. For Act VII of 1888, see General Acts, Vol. V.

CHAPTER II.

OF ADVOCATES, VAKÍLS AND ATTORNEYS.

SECTIONS.

4. Advocates and Vakíls.
5. Attorneys of High Court.

CHAPTER III.

OF PLEADERS AND MUKHTÁRS.

6. Power to make rules as to qualifications, etc., of Pleaders and Mukhtárs.
Publication of rules.
7. Certificates to Pleaders and Mukhtárs.
8. Pleaders on enrolment may practise in Courts and Revenue-offices.
9. Mukhtárs on enrolment may practise in Courts.
10. No person to practise as Pleader or Mukhtár unless qualified.
Revenue-agents may appear, plead and act in Munsifs' Courts in suits under the Bengal Tenancy Act, 1885.
11. Power to declare functions of Mukhtárs.
12. Suspension and dismissal of Pleaders and Mukhtárs convicted of criminal offence.
13. Suspension and dismissal of Pleaders and Mukhtárs guilty of unprofessional conduct.
14. Procedure when charge of unprofessional conduct is brought in subordinate Court or Revenue-office.
Suspension pending investigation.
15. Power to call for record in case of acquittal under section 14.
16. Power to make rules for Mukhtárs on appellate side of High Court.

CHAPTER IV.

OF REVENUE-AGENTS.

17. Power to make rules as to qualifications, etc., of Revenue-agents.
Publication of rules.
18. Certificates to Revenue-agents.
19. Enrolment of Revenue-agent.
20. No person to act as agent in Revenue-offices unless qualified.
21. Dismissal of Revenue-agent convicted of criminal offence.
22. Suspension and dismissal of Revenue-agents guilty of unprofessional conduct.
23. Procedure when Revenue-agent is so charged in subordinate office.
24. Power to Chief Controlling Revenue-authority to call for record.

CHAPTER V.

OF CERTIFICATES.

SECTIONS.

- 25. Fee for certificates.
- 26. Dismissed practitioners to surrender certificates.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTÁRS AND REVENUE-AGENTS.

- 27. High Court and Chief Controlling Revenue-authority to fix fees on civil and revenue proceedings.
Exception as to agents mentioned in section 20.
- 28. Agreements with clients.
- 29. Power to modify or cancel agreements.
- 30. Agreements to exclude further claims.
- 31. Reservation of responsibility for negligence.

CHAPTER VII.

PENALTIES.

- 32. On persons illegally practising as Pleadors, Mukhtárs or Revenue-agents.
- 33. On suspended or dismissed Pleader, etc., failing to deliver certificate.
- 34. On suspended or dismissed practitioner practising during suspension or after dismissal.
- 35. Revision of fines.
- 36. Power to frame and publish lists of touts.

CHAPTER VIII.

MISCELLANEOUS.

- 37. Local Government to appoint examiners.
- 38. Exemption of High Court practitioners from certain parts of Act.
- 39. Suspension or dismissal of person holding Mukhtár and Revenue-agent's certificates.
- 40. Pleadors, etc., not to be suspended or dismissed without being heard.
- 41. Power for certain High Courts to enrol advocates.
- 42. Repeal of Acts I of 1846 and XX of 1853.

THE FIRST SCHEDULE.—ENACTMENTS REPEALED.

THE SECOND SCHEDULE.—VALUE OF STAMPS FOR CERTIFICATES.

ACT No. XVIII OF 1879.¹

[29th October, 1879.]

An Act to consolidate and amend the law relating to Legal Practitioners.

WHEREAS it is expedient to consolidate and amend the law relating to Legal Practitioners in the Lower Provinces of Bengal, the North-Western Provinces, the Punjab, Oudh, the Central Provinces and Assam, and to empower each of the Local Governments of the rest of British India to extend to the territories administered by it such portions of this Act as such Government may think fit ; It is hereby enacted as follows :—

Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Legal Practitioners Act, 1879 : and shall come into force on the first day of January, 1880.

Short title.

This section and section 2 extend to the whole of British India.

Commence-
ment.

Local extent.

The rest of this Act extends, in the first instance, only to the territories respectively administered by the Lieutenant-Governors of the Lower Provinces of Bengal, the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces and Assam. But any other Local Government may from time to time, by notification in the official Gazette, extend ² all or any of the provisions of the rest of this Act to the whole or any part of the territories under its administration.

2. On and from the first day of January, 1880, the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified therein.

Repeal of
enactments.

¹ For the Statement of Objects and Reasons, see Gazette of India, 1878, Pt. V, p. 381 ; for the Reports of the Select Committee, see *ibid.*, 1879, Pt. V, pp. 51 and 841 ; for Proceedings in Council, see *ibid.*, 1878, Supplement, pp. 1658 and 1693 ; *ibid.*, 1879, Supplement, pp. 79, 1066 and 1375.

This Act has been declared in force in Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), s. 3, and by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 407, in the Districts of Hazáribágh, Lohárdaga and Mámbhum and Pargana Dhálbhum and the Kolhán in the District of Singbhum, see Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the District of Palamau, which was separated in 1894.

² Under this power, the Act has been extended, subject to certain omissions, and so far only as it relates to Judicial Courts, Civil and Criminal, to the Madras Presidency, except the Scheduled Districts, from 1st April, 1882, see Fort St. George Gazette, 1881, Pt. I, pp. 491 and 707. Ss. 3 and 4 of the Act have been extended to the Regulation Districts of the Bombay Presidency, see Bombay Government Gazette, 1885, Pt. I, p. 290.

Ch. I, s. 40, Sch. II, and so much of Chs. III, V, VI and VII as relates to Pleaders, have been extended to Coorg, see Mysore Gazette, 1879, Pt. I, p. 355.

(Chapter I.—Preliminary. Sec. 3. Chapter II.—Of Advocates, Vakils and Attorneys. Sec. 4.)

Saving of
rules, etc.

All rules and appointments made, penalties prescribed, fees fixed, persons admitted, names enrolled, certificates issued, sanctions given and orders passed under any enactment hereby repealed shall be deemed to be respectively made, prescribed, fixed, admitted, enrolled, issued, given and passed under this Act.

References to
repealed en-
actments.

All references made to any enactment hereby repealed in any Act or Regulation passed, or notification published, shall be read as if made to the corresponding provisions of this Act.

Interpreta-
tion-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

“Judge” means the presiding judicial officer in every Civil and Criminal Court, by whatever title he is designated :

“Subordinate Court” means all Courts subordinate to the High Court, including Courts of Small Causes established under Act No. IX of 1850¹ or Act No. XI of 1865 :²

“Revenue-office” includes all Courts (other than Civil Courts) trying suits under any Act for the time being in force relating to landholders and their tenants or agents :

“legal practitioner” means an Advocate, Vakil or Attorney of any High Court, a Pleader, Mukhtár or Revenue-agent :

³ [“tout” means a person who procures the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner, or proposes to a legal practitioner to procure his employment in any legal business in consideration of such remuneration.]

CHAPTER II.

OF ADVOCATES, VAKILS AND ATTORNEYS.

Advocates
and Vakils.

4. Every person now or hereafter entered as an Advocate or Vakil on the roll of any High Court under the Letters Patent constituting such Court, or ⁴[under section 41 of this Act], shall be entitled to practise in all the Courts subordinate to the Court on the roll of which he is entered, and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such Court, subject, nevertheless, to the rules in force relating to the language in which

¹ See now the Presidency Small Cause Courts Act, 1882 (XV of 1882), printed, General Acts, Vol. IV.

² See now the Provincial Small Cause Courts Act, 1887 (IX of 1887), printed, General Acts, Vol. V.

³ This definition was added by the Legal Practitioners Act, 1896 (XI of 1896), s. 1.

⁴ These words and figures were substituted for the words “as an advocate on the roll of the Chief Court of the Panjáb” by the Legal Practitioners Act, 1884 (IX of 1884), s. 2, printed, General Acts, Vol. IV.

(Chapter II.—Of Advocates, Vakils and Attorneys. Sec. 5. Chapter III.
—Of Pleaders and Mukhtárs. Sec. 6.)

the Court or office is to be addressed by Pleaders or Revenue-agents ; and any person so entered who ordinarily practises in the Court on the roll of which he is entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court on whose roll he is not entered, or, with the permission of the Court, in any High Court on whose roll he is not entered, and in any Revenue-office :

Provided that no such Vakil shall be entitled to practise under this section before a Judge of the High Court, Division Court or High Court exercising original jurisdiction in a Presidency-town.

5. Every person now or hereafter entered as an Attorney on the roll of an High Court shall be entitled to practise in all the Courts subordinate to such High Court and in all Revenue-offices situate within the local limits of the appellate jurisdiction of such High Court, and every person so entered who ordinarily practises in the Court on the roll of which he is so entered or some Court subordinate thereto shall, notwithstanding anything herein contained, be entitled, as such, to practise in any Court in British India other than a High Court established by Royal Charter on the roll of which he is not entered and in any Revenue-office.

Attorneys of
High Court.

The High Court of the Province in which an Attorney practises under this section may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of an Attorney so practising.

CHAPTER III.

OF PLEADERS AND MUKHTÁRS.

6. The High Court may, from time to time, makes rules ¹ consistent with this Act as to the following matters (namely) :—

- (a) the qualifications, admission and certificates of proper persons to be Pleaders of the subordinate Courts, and of the Revenue-offices situate within the local limits of its appellate jurisdiction, and, in the case of a High Court not established by Royal Charter, of such Court ;

Power to
make rules
as to quali-
fications, etc.,
of Pleaders
and Mukh-
társ.

¹ For rules made under this section by—

- (1) Judicial Commissioner, Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 30 ;
- (2) High Court, Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 150 and 151 ;
- (3) High Court, North-Western Provinces, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 75 and 76 ;
- (4) Judicial Commissioner, Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 76.

(Chapter III.—Of Pleaders and Mukhtárs. Secs. 7-8.)

- (b) the qualifications, admission and certificates of proper persons to be Mukhtárs of the subordinate Courts, and, in the case of a High Court not established by Royal Charter, of such Court ;
- (c) the fees to be paid for the examination and admission of such persons ; and
- (d) the suspension and dismissal of such Pleaders and Mukhtárs.

Publication
of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law : Provided that, in the case of rules made by a High Court not established by Royal Charter, such rules have been previously approved by the Local Government.

Certificates
to Pleaders
and Mukh-
társ.

7. On the admission, under section 6, of any person as a Pleader or Mukhtár, the High Court shall cause a certificate, signed by such officer as the Court, from time to time, appoints in this behalf, to be issued to such person authorising him to practise up to the end of the current year in the Courts, and, in the case of a Pleader, also the Revenue-offices, specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall, subject to any rules¹ consistent with this Act which may, from time to time, be made by the High Court in this behalf, be entitled to have his certificate renewed by the Judge of the District Court within the local limits of whose jurisdiction he then ordinarily practises, or by such officer as the High Court, from time to time, appoints in this behalf.

On every such renewal, the certificate then in possession of such Pleader or Mukhtár shall be cancelled and retained by such Judge or officer.

Every certificate so renewed shall be signed by such Judge or officer, and shall continue in force up to the end of the current year.

Every Judge or officer so renewing a certificate shall notify such renewal to the High Court.

Pleaders on
enrolment
may practise
in Courts
and Revenue-
offices.

8. Every Pleader holding a certificate issued under section 7 may apply to be enrolled in any Court or Revenue-office mentioned therein and situate within the local limits of the appellate jurisdiction of the High Court by which he has been admitted ; and, subject to such rules² consistent with this Act as the High Court or the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the presiding Judge or officer shall enrol him

¹ For rules regarding renewal of certificates made by —

(1) Judicial Commissioner, Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 30 ;

(2) High Court, Madras, *see* the rules quoted in footnote on previous page, which were also made under s. 7.

² For rules made by the High Court at Madras, *see* those quoted in the footnote on previous page, which were also made under s. 8.

(Chapter III.—Of Pleaders and Mukhtárs. Secs. 9-12.)

accordingly : and thereupon he may appear, plead and act in such Court or office and in any Court or Revenue-office subordinate thereto.

9. Every Mukhtár holding a certificate issued under section 7 may apply to be enrolled in any Civil or Criminal Court mentioned therein and situate within the same limits ; and, subject to such rules as the High Court may from time to time make in this behalf, the presiding Judge shall enrol him accordingly ; and thereupon he may practise as a Mukhtár in any such Civil Court and any Court subordinate thereto, and may (subject to the provisions of the Code of Criminal Procedure,) ¹ appear, plead and act in any such Criminal Court and any Court subordinate thereto.

Mukhtárs on enrolment may practise in Courts.

10. Except as provided by this Act or any other enactment for the time being in force, no person shall practise as a Pleader or Mukhtár in any Court not established by Royal Charter unless he holds a certificate issued under section 7 and has been enrolled in such Court or in some Court to which it is subordinate :

No person to practise as Pleader or Mukhtár unless qualified.

Provided that persons who have been admitted as Revenue-agents before the first day of January, 1880, and hold certificates, as such, under this Act in the territories administered by the Lieutenant-Governor of Bengal, may be enrolled in manner provided by section 9 in any Munsif's Court in the said territories, and on being so enrolled may appear, plead and act in such Court in suits under Bengal Act VIII of 1869 ² (*to amend the procedure in suits between Landlord and Tenant*) or under any other Act for the time being in force regulating the procedure in suits between landholders and their tenants and agents.

Revenue-agents may appear, plead and act in Munsifs' Courts in suits under the Bengal Act VIII of 1869.

11. Notwithstanding anything contained in the Code of Civil Procedure, ³ the High Court may, from time to time, make rules declaring what shall be deemed to be the functions, powers and duties of Mukhtárs practising in the subordinate Courts, and, in the case of a High Court not established by Royal Charter, in such Court.

Power to declare functions of Mukhtárs.

12. The High Court may suspend or dismiss any Pleader or Mukhtár holding a certificate issued under section 7 who is convicted of any criminal offence implying a defect of character which unfits him to be a Pleader or Mukhtár, as the case may be.

Suspension and dismissal of Pleaders and Mukhtárs convicted of criminal offence.

¹ See now the Code of Criminal Procedure, 1898 (Act V of 1898).

² See now the Bengal Tenancy Act (VIII of 1885), printed, Bengal Code, Vol. I, Ed. 1889, p. 512.

³ See now the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV,

Suspension and dismissal of Pleaders and Mukhtárs guilty of unprofessional conduct.

¹13. The High Court may also, after such inquiry as it thinks fit, suspend or dismiss any Pleader or Mukhtár holding a certificate as aforesaid—

- (a) who takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognized agent of such party within the meaning of the Code of Civil Procedure,² or some servant, relative or friend authorised by the party to give such instructions, or
- (b) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (c) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment of any legal business of himself or any other Pleader or Mukhtár, or
- (d) who, directly or indirectly, procures or attempts to procure the employment of himself as such Pleader or Mukhtár through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or
- (e) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or
- (f) for any other reasonable cause.

Procedure when charge of unprofessional conduct is brought him subordinate Court or Revenue-office.

14. If any such Pleader or Mukhtár practising in any subordinate Court or in any Revenue-office is charged in such Court or office with taking instructions except as aforesaid, or with any such misconduct as aforesaid, the presiding officer shall send him a copy of the charge and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the Pleader or Mukhtár at least fifteen days before the day so appointed.

On such day, or on any subsequent day to which the enquiry may be adjourned, the presiding officer shall receive and record all evidence properly produced in support of the charge, or by the Pleader or Mukhtár, and shall proceed to adjudicate on the charge.

If such officer finds the charge established and considers that the Pleader or Mukhtár should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and shall report the same to the High Court; and the High Court may acquit, suspend or dismiss the Pleader or Mukhtár.

¹ This section was substituted for the original section by the Legal Practitioners Act, 1896 (XI of 1896), s. 2.

² See now the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV.

Any District Judge, or with his sanction any Judge subordinate to him, ^{Suspension pending investigation.} ¹[any Judge of a Court of Small Causes of a Presidency-town,] any District Magistrate, or with his sanction any Magistrate subordinate to him, and any Revenue-authority not inferior to a Collector, or with the Collector's sanction any Revenue-officer subordinate to him, may, pending the investigation and the orders of the High Court, suspend from practice any Pleader or Mukhtár charged before him or it under this section.

Every report made to the High Court under this section shall—

- (a) when made by any Civil Judge subordinate to the District Judge, be made through such Judge;
- (b) when made by a Magistrate subordinate to the Magistrate of the District,² be made through the Magistrate of the District² and the Sessions Judge;
- (c) when made by the Magistrate of the District,² be made through the Sessions Judge;
- (d) when made by any Revenue-officer subordinate to the Chief Controlling Revenue-authority, be made through such Revenue-authorities as the Chief Controlling Revenue-authority may, from time to time, direct.

Every such report shall be accompanied by the opinion of each Judge, Magistrate or Revenue-authority through whom or which it is made.

15. The High Court, in any case in which a Pleader or Mukhtár has been acquitted under section 14 otherwise than by an order of the High Court, may call for the record and pass such order thereon as it thinks fit. ^{Power to call for record in case of acquittal under section 14.}

16. Notwithstanding anything contained in any Letters Patent or in the Code of Civil Procedure,³ section 37, clause (a), any High Court established by Royal Charter may, from time to time, make rules consistent with this Act as to the following matters (namely) :— ^{Power to make rules for Mukhtárs on appellate side of High Court.}

- (a) the qualifications and admission of proper persons to be Mukhtárs practising on the appellate side of such Court;
- (b) the fees to be paid for the examination and admission of such persons;
- (c) the security which they may be required to give for their honesty and good conduct;
- (d) the suspension and dismissal of such Mukhtárs; and

¹ These words were inserted by the Legal Practitioners Act, 1884 (IX of 1884), s. 4.

² To be read as "District Magistrate," see the Code of Criminal Procedure, 1898 (Act V of 1898), s. 3 (2).

³ See now the Code of Civil Procedure, 1882 (Act XIV of 1882), printed, General Acts, Vol. IV.

(Chapter IV.—Of Revenue-agents. Secs. 17-19.)

(e) declaring what shall be deemed to be their functions, powers and duties;

and may prescribe and impose fines for the infringement of such rules, not exceeding in any case five hundred rupees; and such fines, when imposed, may be recovered as if they had been imposed in the exercise of the High Court's ordinary original criminal jurisdiction.

CHAPTER IV.

OF REVENUE-AGENTS.

Power to
make rules
as to qualifica-
tions, etc., of
Revenue-
agents.

17. The Chief Controlling Revenue-authority may, from time to time, make rules¹ consistent with this Act as to the following matters (namely):—

- (a) the qualifications, admission and certificates of proper persons to be Revenue-agents;
- (b) the fees to be paid for the examination and admission of such persons;
- (c) the suspension and dismissal of such Revenue-agents; and
- (d) declaring what shall be deemed to be their functions, powers and duties.

Publication
of rules.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Certificates to
Revenue-
agents.

18. On the admission of any person as a Revenue-agent under section 17² the Chief Controlling Revenue-authority shall cause a certificate, signed by such officer as such Authority from time to time appoints in this behalf, to be issued to such person, authorizing him to practise up to the end of the current year in such Revenue-offices as may be specified therein.

At the expiration of such period, the holder of the certificate, if he desires to continue to practise, shall be entitled to have his certificate renewed by the Secretary of the Chief Controlling Revenue-authority, or by any other officer authorised by such Authority in that behalf.

On every such renewal, the certificate then in the possession of such Revenue-agent shall be cancelled and retained by such Secretary or other officer.

Every certificate so renewed shall be signed by such Secretary or other officer and shall continue in force to the end of the current year.

Every officer so renewing a certificate shall notify the renewal to the Chief Controlling Revenue-authority.

Enrolment
of Revenue-
agent.

19. Every Revenue-agent holding a certificate issued under section 18 may apply to be enrolled in any Revenue-office mentioned therein and situate within

¹ For rules made under this section as to Revenue-Agents in —

(1) Assam, *see* the Assam Manual of Local Rules and Orders, Ed. 1893, pp. 153-158;

(2) North-Western Provinces, *see* North-Western Provinces List of Local Rules and Orders, Ed. 1894, p. 76.

(Chapter IV.—Of Revenue-agents. Secs. 20-22.)

the limits of the territory under the Chief Controlling Revenue-authority; and, subject to such rules as the Chief Controlling Revenue-authority may, from time to time, make in this behalf, the officer presiding in such office shall enrol him accordingly, and thereupon he may practise as a Revenue-agent in such office and in any Revenue-office subordinate thereto.

20. Except as provided by this Act or any other enactment for the time being in force, no person, other than a Pleader duly qualified under the provisions hereinbefore contained, shall practise as a Revenue-agent in any Revenue-office, unless he holds a certificate issued under section 18 and has been enrolled in such office or some other office to which it is subordinate:

No person to act as agent in Revenue-offices unless qualified.

Provided that any person duly authorised in this behalf may, with the sanction of the Chief Controlling Revenue-authority, or of an officer empowered by the Local Government in this behalf, transact all or any business in which his principal may be concerned in any Revenue-office.

The sanction mentioned in this section may be general or special, and may at any time be revoked or suspended by the Authority or officer granting the same.

21. The Chief Controlling Revenue-authority may suspend or dismiss any Revenue-agent holding a certificate issued under this Act who is convicted of any criminal offence implying a defect of character which unfits him to be a Revenue-agent.

Dismissal of Revenue-agent convicted of criminal offence.

¹ 22. The Chief Controlling Revenue-authority may also, after such inquiry as it thinks fit, suspend or dismiss any Revenue-agent holding a certificate as aforesaid—

Suspension and dismissal of Revenue-agents guilty of unprofessional conduct.

- (a) who is guilty of fraudulent or grossly improper conduct in the discharge of his professional duty, or
- (b) who tenders, gives or consents to the retention, out of any fee paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other Revenue-agent, or
- (c) who, directly or indirectly, procures or attempts to procure the employment of himself as such Revenue-agent through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed or promised to be so given, or
- (d) who accepts any employment in any legal business through a person who has been proclaimed as a tout under section 36, or
- (e) for any other reasonable cause.

¹ This section was substituted for the original section by the Legal Practitioners Act, 1896, XI of 1896), s. 3.

(Chapter IV.—Of Revenue-agents. Secs. 23-24. Chapter V.—Of Certificates. Sec. 25.)

Procedure when Revenue-agent is so charged in subordinate office.

23. If any Revenue-agent holding a certificate issued under this Act is charged with any such conduct in any office subordinate to the Chief Controlling Revenue-authority, or in the Court of any Munsif, the officer at the head of such office, or such Munsif, as the case may be, shall send him a copy of the charge, and also a notice that, on a day to be therein appointed, such charge will be taken into consideration.

Such copy and notice shall be served upon the person charged at least fifteen days before the day so appointed. On such day or on any other day to which the enquiry may be adjourned, the officer or Munsif shall receive all evidence properly produced in support of the charge, or by the person charged, and shall proceed to adjudicate on the charge.

If the officer or Munsif finds the charge established, and considers that the person charged should be suspended or dismissed in consequence, he shall record his finding and the grounds thereof, and report the same to the Chief Controlling Revenue-authority; and such Authority shall proceed to acquit, suspend or dismiss him.

Any Revenue-officer not inferior to a Collector, and, with the Collector's sanction, any Revenue-officer subordinate to him, or any Munsif in his district, may, pending the investigation and the orders of the Chief Controlling Revenue-authority, suspend from practice any Revenue-agent charged before him under this section.

Where any officer acting under this section is subordinate to the Commissioner of a Division, he shall transmit the report through such Commissioner, who shall forward with the same an expression of his own opinion on the case.

Power to Chief Controlling Revenue-authority to call for record.

24. The Chief Controlling Revenue-authority, in any case in which a Revenue-agent has been acquitted under section 23 otherwise than by an order of the Chief Controlling Revenue-authority, may call for the record and pass such order thereon as seems fit.

CHAPTER V.

OF CERTIFICATES.

Fee for certificates.

25. Every certificate, whether original or renewed, issued under this Act shall be written upon stamped paper of the value prescribed therefor in the second schedule hereto annexed ¹[and of such description as the Local Government may, from time to time, prescribe ²]:

¹ These words were inserted by the Legal Practitioners Act, 1881 (IX of 1884), s. 5.

² For instance of rule prescribing the stamp paper to be used for certificates, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 78.

(Chapter V.—Of Certificates. Sec. 26. Chapter VI.—Of the Remuneration of Pleaders, Mukhtárs and Revenue-agents. Secs. 27-28.)

Provided that a certificate issued on or after the first day of July in any year may be written on stamped paper of half the value so prescribed.

26. When any Pleader, Mukhtár or Revenue-agent is suspended or dismissed under this Act, he shall forthwith deliver up his certificate to the Court or officer at the head of the office before or in which he was practising at the time he was so suspended or dismissed, or to any Court or officer to which the High Court or Chief Controlling Revenue-authority (as the case may be) orders him to deliver the same.

Dismissed practitioners to surrender certificates.

CHAPTER VI.

OF THE REMUNERATION OF PLEADERS, MUKHTÁRS AND REVENUE-AGENTS.

27. The High Court shall, from time to time, fix and regulate the fees¹ payable by any party in respect of the fees of his adversary's Advocate, Pleader, Vakíl, Mukhtár or Attorney upon all proceedings (a) on the appellate side of such Court, (b) in the case of a High Court not established by Royal Charter, on its original side, and (c) in subordinate Courts, ²[and in respect of the fees of his adversary's Revenue-agent appearing, pleading or acting under section 10].

High Court and Chief Controlling Revenue-authority to fix fees on civil and revenue-proceedings.

The Chief Controlling Revenue-authority shall, from time to time, fix and regulate³ the fees payable upon all proceedings in the Revenue-offices by any party in respect of the fees of his adversary's Advocate, Pleader, Vakíl, Attorney, Mukhtár or Revenue-agent.

Tables of the fees so fixed shall be published in the local official Gazette.

Nothing in this section applies to the agents mentioned in the proviso to section 20.

Exception as to agents mentioned in section 20. Agreements with clients.

28. No agreement entered into by any Pleader, Mukhtár or Revenue-agent with any person retaining or employing him, respecting the amount and manner of payment for the whole or any part of any past or future services,

¹ For rules as to pleaders' fees made by —

(1) Judicial Commissioner, Central Provinces, *see* the Central Provinces List of Local Rules and Orders, Ed. 1896, p. 79 ;

(2) High Court, Madras, *see* the rules quoted in the footnote on p. 269, *supra*, which were also framed under this section ;

(3) High Court, North-Western Provinces, *see* North-Western Provinces List of Local Rules and Orders, Ed. 1894, p. 78 ;

(4) Judicial Commissioner, Oudh (pleaders in Civil Courts), *see* North-Western Provinces List of Local Rules and Orders, Ed. 1894, p. 78.

² These words were added by the Legal Practitioners Act, 1884 (IX of 1884), s. 6.

³ For rules as to fees in revenue-proceedings in—

(1) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 80 ;

(2) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 76 and 77.

(Chapter VI.—Of the Remuneration of Pleaders, Mukhtárs and Revenue-agents. Secs. 29-31. Chapter VII.—Penalties. Secs. 32-33.)

fees, charges or disbursements in respect of business done or to be done by such Pleader, Mukhtár or Revenue-agent shall be valid unless it is made in writing signed by such person, and is, within fifteen days from the day on which it is executed, filed in the District Court or in some Court in which some portion of the business in respect of which it has been executed has been or is to be done.

Power to modify or cancel agreements.

29. Where a suit is brought to enforce any such agreement, if the agreement is not proved to be fair and reasonable, the Court may reduce the amount payable thereunder or order it to be cancelled, and the costs, fees, charges and disbursements in respect of the business done to be ascertained in the same manner as if no such agreement had been made.

Agreements to exclude further claims.

30. Such an agreement shall exclude any further claim of the Pleader, Mukhtár or Revenue-agent beyond the terms of the agreement with respect to any services, fees, charges or disbursements in relation to the conduct and completion of the business in respect of which the agreement is made, except such services, fees, charges or disbursements, if any, as are expressly excepted by the agreement.

Reservation of responsibility for negligence.

31. A provision in any such agreement that the Pleader, Mukhtár or Revenue-agent shall not be liable for negligence, or that he shall be relieved from any responsibility to which he would otherwise be subject as such Pleader, Mukhtár or Revenue-agent, shall be wholly void.

CHAPTER VII.

PENALTIES.

On persons illegally practising as Pleaders, Mukhtárs or Revenue-agents.

32. Any person who practises in any Court or Revenue-office in contravention of the provisions of section 10 or section 20 shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding ten times the amount of the stamp required by this Act for a certificate authorizing him so to practise in such Court or office, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

He shall also be incapable of maintaining any suit for, or enforcing any lien with respect to, any fee or reward for, or with respect to, anything done or any disbursement made by him as Pleader, Mukhtár or Revenue-agent whilst he has been contravening the provisions of either of such sections.

On suspended or dismissed Pleader, etc., failing

33. Any Pleader, Mukhtár or Revenue-agent failing to deliver up his certificate as required by section 26 shall be liable, by order of the Court, Authority or officer to which or to whom, or according to whose orders, the

(Chapter VII.—Penalties. Secs. 34-36. Chapter VIII.—Miscellaneous.
Sec. 37.)

delivery should be made, to a fine not exceeding two hundred rupees, and in default of payment, to imprisonment in the civil jail for a term which may extend to three months.

to delivery
certificates.

34. Any Pleader, Mukhtár or Revenue-agent who, under the provisions of this Act, has been suspended or dismissed, and who, during such suspension or after such dismissal, practises as a Pleader, Mukhtár or Revenue-agent in any Court or Revenue-office, shall be liable, by order of such Court or the officer at the head of such office, to a fine not exceeding five hundred rupees, and, in default of payment, to imprisonment in the civil jail for a term which may extend to six months.

On suspended
or dismissed
practitioner
practising
during
suspension
or after
dismissal.

35. Every order under section 32, 33 or 34 shall be subject to revision by the High Court where the order has been passed by a subordinate Court, and by the Chief Controlling Revenue-authority where the order has been passed by an officer subordinate to such Authority.

Revision of
fines.

36. (1) Every High Court, District Judge, Sessions Judge, District Magistrate and Presidency Magistrate, every Revenue-officer, not being below the rank of a Collector of a District, and the Chief Judge of every Presidency Small Cause Court (each as regards their or his own Court and the Courts, if any, subordinate thereto) may frame and publish lists of persons proved to their or his satisfaction, by evidence of general repute or otherwise, habitually to act as touts, and may, from time to time, alter and amend such lists.

Power to
frame and
publish lists
of touts.

(2) No person's name shall be included in any such list until he shall have had an opportunity of showing cause against such inclusion.

(3) A copy of every such list shall be kept hung up in every Court to which the same relates.

(4) The Court or Judge may, by general or special order, exclude from the precincts of the Court any person whose name is included in any such list.

(5) Every person whose name is included in any such list shall be deemed to be proclaimed as a tout within the meaning of section 13, clause (e), and section 22, clause (d).

CHAPTER VIII.

MISCELLANEOUS.

37. To facilitate the ascertainment of the qualifications mentioned in sections 6 and 17 respectively, the Local Government shall, from time to

Local Gov-
ernment to
appoint ex-
aminers.

¹ This section was substituted for the original s. 36 (relating to penalty for receiving or giving commission) by the Legal Practitioners Act, 1896 (XI of 1896), s. 4.

time, appoint persons to be examiners for the purposes aforesaid, and may, from time to time, make regulations for conducting such examinations.

Exemption of High Court practitioners from certain parts of Act.

38. Except as provided by sections 4, 5, 16, 27, 32 and 36, nothing in this Act applies to Advocates, Vakils and Attorneys admitted and enrolled by any High Court under the Letters Patent by which such Court is constituted, or to Mukhtárs practising in such Court or to Advocates enrolled ¹[under section 41 of this Act].

Suspension or dismissal of person holding Mukhtár and Revenue-agent's certificates.

39. When any person who holds a certificate as a Mukhtár under section 7 and a certificate as a Revenue-agent under section 18 is suspended or dismissed in one of such capacities, he shall be deemed to be suspended or dismissed, as the case may be, also in the other.

Pleaders, etc., not to be suspended or dismissed without being heard.

40. Notwithstanding anything hereinbefore contained, no Pleader, Mukhtár or Revenue-agent shall be suspended or dismissed under this Act unless he has been allowed an opportunity of defending himself before the Authority suspending or dismissing him.

Power for certain High Courts to enrol advocates.

² 41. (1) A High Court not established by Royal Charter may, from time to time, with the previous sanction of the Local Government, make rules as to the qualifications and admission of proper persons to be Advocates of the Court, and, subject to such rules, may enrol such and so many Advocates as it thinks fit.

(2) Every Advocate so enrolled shall be entitled to appear for the suitors of the Court, and to plead or to act, or to plead and act, for those suitors, according as the Court may by its rules determine, and subject to those rules.

(3) The High Court may dismiss any Advocate so enrolled or suspend him from practice :

(4) Provided that an Advocate shall not be dismissed or suspended under this section unless he has been allowed an opportunity of defending himself before the High Court which enrolled him, and, except in the case of the Chief Court of the Punjab, unless the order of the High Court dismissing or suspending him has been confirmed by the Local Government.

Repeal of Acts I of 1846 and XX of 1853.

³ 42. Act I of 1846 (*for amending the law regarding the appointment and remuneration of pleaders in the Courts of the East India Company*) and Act XX of 1853 (*to amend the law relating to pleaders in the Courts of the East India Company*) are repealed.

¹ These words were substituted for the words "by the Chief Court of the Punjab" by the Legal Practitioners Act, 1884 (IX of 1884), s. 7, printed, General Acts, Vol. IV.

² This section was substituted for the original s. 41 (relating to advocates of the Punjab Chief Court) by the Legal Practitioners Act, 1884 (IX of 1884), s. 8, printed, General Acts, Vol. IV.

³ S. 42 was added by the Legal Practitioners Act, 1884 (IX of 1884), s. 9.

(First Schedule.—Enactments repealed. Second Schedule.—Value of Stamps for Certificates.)

FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 2.)

Number and date of enactments.	Title.	Extent of repeal.
Act XX of 1865 .	To amend the law relating to Pleadors and Mukhtárs.	The whole.
Act XXIX of 1865 .	To amend the Pleadors, Mukhtárs and Revenue-agents Act, 1865.	So much as has not been repealed.
Act IX of 1866 .	To extend to the Sadr Court of the North-Western Provinces certain provisions of "The Pleadors, Mukhtárs and Revenue-agents Act, 1865," and of Act No. XXIX of 1865.	The whole.
Act IV of 1876 .	To authorise Revenue-agents to practise in certain suits in the Munsifs' Courts of the Lower Provinces of Bengal.	The whole.
Act XVII of 1877 .	The Punjab Courts Act, 1877 . .	Sections 42, 43, 44 and 45.

SECOND SCHEDULE.

VALUE OF STAMPS FOR CERTIFICATES.

(See section 25.)

I.

For a certificate authorising the holder to practise as a Pleader—

- (a) in the High Court and any subordinate Court—rupees fifty :
- (b) in any Court of Small Causes in a Presidency-town—rupees twenty-five :
- (c) in all other subordinate Courts—rupees twenty-five :
- (d) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildárs, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees fifteen :
- (e) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

(Second Schedule.—Value of Stamps for Certificates.)

II.

For a certificate authorising the holder to practise as a Mukhtár—

- (f) in the High Court and any subordinate Court—rupees twenty-five :
- (g) in any Court of Small Causes in a Presidency-town—rupees fifteen :
- (h) in all other subordinate Courts—rupees fifteen :
- (i) in the Courts of Subordinate Judges, Munsifs, Assistant Commissioners, Extra Assistant Commissioners and Tahsildárs, in Courts of Small Causes outside the Presidency-towns and in all Criminal Courts subordinate to the High Court—rupees ten :
- (j) in the Courts of Munsifs and any Civil or Criminal Court of first instance not hereinbefore specifically mentioned—rupees five.

III.

For a certificate authorising the holder to practise as a Revenue-agent—

- (k) in the office of the Chief Controlling Revenue-authority and in any Revenue-office subordinate to such Authority—rupees fifteen :
- (l) in the office of a Commissioner and in any Revenue-office subordinate to a Commissioner—rupees ten :
- (m) in the office of a Collector and in any Revenue-office subordinate to a Collector—rupees five.

THE GLANDERS AND FARCY ACT, 1879.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. Interpretation-clause.
3. Local Government may apply the Act.
4. Local Government to appoint Inspectors.
5. Inspector's power to seize horse.
6. Power of entry and search given to Inspectors.
7. Horse to be examined by Veterinary Practitioner.

SECTIONS.

8. Horse to be destroyed if found diseased ; otherwise restored.
9. When horse diseased, place where it has been to be disinfected, etc.
10. Owner or person in charge of diseased horse to give notice.
11. Prohibition against removal, without license, of horse which has been with diseased horse.
12. Vexatious entries, searches and seizures.
13. Penalty for refusing to comply with notice under section 9 or moving horse contrary to section 11.
14. Power to make rules.
15. Appointment of same person to be both Inspector and Veterinary Practitioner.

ACT No. XX OF 1879.¹

[14th November, 1879.]

An Act to provide for the better prevention of Glanders and
Farcy among Horses.

WHEREAS it is expedient to provide for the better prevention of glanders and farcy among horses ;

It is hereby enacted as follows :—

1. This Act may be called the Glanders and Farcy Act, 1879.

It extends to the whole of British India ;²

and it shall come into force at once.

2. In this Act, unless there is something repugnant in the subject or context,—

“ horse ” includes also ponies, asses, mules and jennets :

“ diseased ” means affected with glanders or farcy.

3. The Local Government may, by notification in the official Gazette,

Short title.

Local extent.

Commence-
ment.Interpreta-
tion-clause.

“ horse : ”

“ diseased. ”

Local Gov-
ernment may

¹ The Statement of Objects and Reasons was not published ; for discussions in Council, *see* Gazette of India, 1879, Supplement, pp. 1389 and 1533.

This Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to be in force in the Districts of Hazáribágh, Lohárdága, including at this time the Palamau District, Mámbhum, Dhálbhum and the Kollán in the District of Singbhum, *see* pp. 672 and 648 of the Bengal Code, Vol. I, Ed. 1889.

It has also been extended, by notification under s. 5 of the same Act, to Upper Burma (except the Shan States), *see* the notification in the Appendix to the Burma Code, Ed. 1889, p. 491.

² The rest of this paragraph, which excepted the territories administered by the Governors of Madras and Bombay and the Lieutenant-Governor of Bengal from the operation of the Act, was repealed by Act XXIV of 1896 and the Glanders and Farcy Act (1879) Amendment Act, 1896 (XV of 1896).

(Secs. 4-7.)

apply the
Act.

apply this Act, or any provision of this Act, to any local area,¹ to be specified in such notification, within the territories administered by it, and may in like manner amend or cancel any such notification.

Local Gov-
ernment to
appoint
Inspectors.

4. When this Act has been so applied to any local area, the Local Government may, by notification in the official Gazette,² appoint either by name or by virtue of their office such persons as it thinks fit to be Inspectors under this Act and to exercise and perform, within the whole of such local area or such portions thereof as it may from time to time prescribe, the powers conferred and the duties imposed by this Act on such officers.

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Every person so appointed shall be deemed a public servant within the meaning of the Indian Penal Code.³

XLV of 1360.

Inspector's
power to
seize horse.

5. Within the local limits for which he is so appointed, any such Inspector may seize any horse which he has reason to believe, from personal knowledge or from information given by any person and taken down in writing, is diseased.

Power of
entry and
search given
to Inspectors.

6. For the purpose of making such seizure, such Inspector may, subject to such rules as the Local Government may from time to time make in this behalf, enter and search any field, building or other place where he has reason to believe that any such horse is to be found.

Horse to be
examined by
Veterinary
Practitioner.

7. On any such seizure, the Inspector shall cause the horse so seized to be examined as soon as possible by such Veterinary Practitioner ⁴ as the Local Government ⁵ may from time to time appoint in this behalf :

¹ For a list of places in the Central Provinces to which the Act has been applied, see Central Provinces Code, Ed. 1891, App. I, p. 369.

The whole Act and the rules framed thereunder were extended to the whole of the Punjab — See Notification No. 657, Punjab Gazette, 1883, Pt. I, p. 106.

For a list of places in the North-Western Provinces and Oudh to which the Act has been applied, see the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 226.

The Act has been extended to Rangoon, see the Burma Rules Manual, Ed. 1897, p. 52; and, with the exception of s. 10, it has also been applied to the rest of Burma, including Upper Burma, except the Shan States, see *ibid.*

For places to which the Act has been applied in the Presidency of Bombay, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. 231 and 232.

For certain districts in the Lower Provinces of Bengal to which this Act has been extended, see Calcutta Gazette, 1898, Pt. I, p. 367, and for a list of places to which it has been applied in Saran, Champaran and Mozufferpore, see Calcutta Gazette, 1898, Pt. I, p. 367.

² For persons appointed under this section in the North-Western Provinces and Oudh, see the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1893, p. 227, and North-Western Provinces and Oudh Gazette, 1893, Pt. I, p. 853; in the Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, pp. 30 and 31; in Burma, see Burma Gazette, 1896, Pt. II, p. 320; in the Presidency of Bombay, see pp. 232 and 234, Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, and in the Districts of Saran, Champaran and Mozufferpore, see Calcutta Gazette, 1898, p. 367.

³ Printed, General Acts, Vol. I, Ed. 1898, p. 240.

⁴ The word "Practitioner" was substituted for the word "Surgeon" in ss. 7 and 8 by the Glanders and Farcy Act (1879) Amendment Act, 1896 (XV of 1896), s. 2.

⁵ For instances of orders under this section for—

Bombay, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. 234 to 236;

Burma, see Burma Rules Manual, Ed. 1897, p. 53;

North-Western Provinces and Oudh, see North-Western Provinces and Oudh Gazette, 1898, Pt. I, p. 854;

Lower Provinces of Bengal, see Calcutta Gazette, 1898, Pt. I, p. 367.

(Secs. 8-12.)

¹[Provided that when the Inspector is also a Veterinary Practitioner so appointed he may make the examination himself.]

8. If such Practitioner ² certifies in writing that such horse is diseased, the Inspector shall cause the same to be immediately destroyed; but if such Practitioner ² does not so certify, the Inspector shall at once deliver the same to the person entitled to the possession thereof.

Horse to be destroyed if found diseased; otherwise restored.

9. When any diseased horse has been in any building, shed or other enclosed place, or in any open lines, the Inspector may issue a notice to the owner of such building, shed, place or lines, or the person in charge thereof, directing him to have the same disinfected, and the internal fittings thereof, or such other things found therein or near thereto as the Local Government may from time to time by rule prescribe, destroyed.

When horse diseased, place where it has been to be disinfected, etc.

On the failure or neglect of such owner or other person to comply with such notice within a reasonable time, the Inspector shall cause such building, shed, place or lines to be disinfected, and such fittings or other things to be destroyed, and the expense (if any) thereby incurred may be recovered from such owner or other person as if it were a fine.³

10. The owner or any person in charge of a diseased horse shall give immediate information of such horse being diseased to the Inspector or to some officer of Police.

Owner or person in charge of diseased horse to give notice.

11. No person in charge of any horse which has been in the same field, building or place or in contact with a diseased horse shall move such horse, except in good faith for the purpose of preventing infection or under a license to be granted by the Inspector and subject to the conditions of such license.

Prohibition against removal, without license, of horse which has been with diseased horse.

12. Any Inspector who, without reasonable ground of suspicion, enters or searches any field, building or other place, or vexatiously and unnecessarily seizes or detains any horse on the pretence that it is diseased, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Vexatious entries, searches and seizures.

No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

13. Any person who refuses or neglects to comply with any notice issued by the Inspector under section 9, or who moves any horse in contravention of

Penalty for refusing to comply with

¹ The proviso to s. 7 was added by the Glanders and Farcy Act (1879) Amendment Act, 1896 (XV of 1896), s. 2.

² The word "Practitioner" was substituted for the word "Surgeon" in ss. 7 and 8 by the Glanders and Farcy Act (1879) Amendment Act, 1896 (XV of 1896), s. 2.

³ As to recovery of fines, see the General Clauses Act, 1897 (X of 1897), s. 25.

(Secs. 14-15.)

notice under
section 9 ;
or moving
horse con-
trary to sec-
tion 11.

Power to
make rules.

section 11, shall be punished with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

14. The Local Government¹ may, from time to time, make rules, consistent with this Act,—

- (a) for regulating entries and searches by Inspectors under this Act ;
- (b) for regulating the destruction of horses certified under section 8 to be diseased, and the disposal of the carcases of such horses ;
- (c) for regulating the disinfecting of buildings and places in which diseased horses have been, and for prescribing what things found therein or near thereto shall be destroyed ;
- (d) for regulating the grant of licenses under section 11, and the conditions on which such licenses shall be granted ; and
- (e) generally for carrying out the purposes of this Act.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Any person breaking a rule made under this section shall be punished with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

² 15. Any Veterinary Practitioner may be appointed by the Local Government to be both Inspector and Veterinary Practitioner for all or any of the purposes of this Act or of any rule thereunder.

Appointment
of same per-
son to be
both In-
spector and
Veterinary
Practitioner.

¹ For rules under this section for—

- (1) Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. 236 to 249, and Bombay Government Gazette, 1897, Pt. I, pp. 1080 and 1082 ;
- (2) North-Western Provinces and Oudh, *see* North-Western Provinces and Oudh Gazette, 1898, Pt. I, p. 855 ;
- (3) Burma, *see* Burma Rules Manual, Ed. 1897, p. 53 ;
- (4) Central Provinces, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 81 ;
- (5) Punjab, *see* Punjab Gazette, 1880, Pt. I, p. 401. These rules have been extended to the whole of the Punjab, *see* the footnote to s. 4, *supra*, p. 284 ;
- (6) the Districts of Sarun, Champaran and Mozufferpore by the Government of Bengal, *see* Calcutta Gazette, 1898, Pt. I, p. 402.

² The present s. 15 was added by the Glanders and Farcy Act (1879) Amendment Act, 1896 (XV of 1896), s. 3. The original section was previously repealed by the Repealing and Amending Act, 1891 (XII of 1891).

THE FOREIGN JURISDICTION AND EXTRADITION ACT, 1879.

CONTENTS.

CHAPTER I.

PRELIMINARY.

PREAMBLE.

SECTIONS.

1. Short title.
Extent.
Commencement.
Saving of other laws and of treaties.
 2. Repeal.
 3. Interpretation-clause.
-

CHAPTER II.

POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

4. Exercise of powers of Governor General in places beyond British India, and delegation thereof.
 5. Notification of exercise or delegation of such powers.
 6. Appointment, powers and jurisdiction of Justices of the Peace.
 7. Confirmation of existing Political Agents and Justices.
 8. Extension of criminal law of British India to British subjects out of British India.
-

CHAPTER III.

INQUIRIES IN BRITISH INDIA INTO CRIMES COMMITTED BY BRITISH SUBJECTS IN PLACES BEYOND BRITISH INDIA.

- 9 } [Repealed.]
 10. }
-

CHAPTER IV.

EXTRADITION.

11. Arrest and removal of persons other than European British subjects escaping into British India.
12. Direction and execution of warrant.
- 12A. Power to Political Agent to direct security to be taken and procedure thereon.
- 12B. Arrest on breach of bond to appear.

SECTIONS.

- 12C. Application of sections 513 and 514, Act X, 1882.
 13. Political Agent may himself dispose of case, or make over person to ordinary Courts for trial.
 14. Requisitions for extradition by the executive of any part of British dominions or Foreign Power.
 15. Magistrate may in certain cases issue warrant for arrest of person accused of having committed an offence out of British India. Magistrate to inform Political Agent or Local Government.
 16. Person arrested to be released after certain time if not proceeded against.
 17. Bail.
 17A. Detention of persons arrested under section 54, clause *seventhly*, Act X, 1882.

CHAPTER V.

MISCELLANEOUS.

18. Power to make rules.
 19. Execution of commissions issued by Foreign Criminal Courts.

THE SCHEDULE.

ACT No. XXI OF 1879,¹

[14th November, 1879.]

An Act to provide for the trial of offences committed in places beyond British India and for the Extradition of Criminals.

Preamble

WHEREAS by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means the Governor General of India in Council has power and

¹ For the Statement of Objects and Reasons, see Gazette of India, 1879, Pt. V, p. 831; for Proceedings in Council, see *ibid*, Supplement, pp. 1380 and 1535.

This Act has been declared in force in —

the Santāl Parganas by the Santāl Parganas' Settlement Regulation, 1872 (III of 1872), s. 3, as amended by the Santāl Parganas' Laws Regulation, 1886 (III of 1886), printed, Bengal Code, Vol. I, Ed. 1889, p. 597;

Upper Burma generally (except the Shan States) by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6, printed, Burma Code, Ed. 1889, p. 364;

British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, printed, Baluchistan Code, Ed. 1890, p. 69; and

Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), s. 3.

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to be in force in the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhalbhum and the Kolhán in the District of Singbhum, see Gazette of India, 1891, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palaman, which was separated in 1894.

Ss. 1 and 3 and Chs. IV and V of the Act, have been extended to the Shan States by the Shan States Laws and Criminal Ju-tice Order, 1895, see Burma Gazette, 1895, Pt. I, p. 262, as amended by Notification No. 20, dated August 23, 1898, Burma Gazette, 1898, Pt. I, p. 406.

(Chapter I.—Preliminary. Sec. 1.)

XI of 1872.

jurisdiction within divers places beyond the limits of British India ; and whereas such power and jurisdiction have, from time to time, been delegated to Political Agents and others acting under the authority of the Governor General in Council ; and whereas doubts having arisen how far the exercise of such power and jurisdiction, and the delegation thereof, were controlled by and dependent on the laws of British India, the Foreign Jurisdiction and Extradition Act, 1872,¹ was passed to remove such doubts, and also to consolidate and amend the law relating to the exercise and delegation of such power and jurisdiction, and to offences committed by British subjects beyond the limits of British India, and to the extradition of criminals ;² and whereas it is expedient to repeal that Act and re-enact it with the amendments hereinafter appearing ; It is hereby enacted as follows :—

CHAPTER I. .

PRELIMINARY.

1. This Act may be called the Foreign Jurisdiction and Extradition Short title. Act, 1879.

It extends to the whole of British India ;³

to all Native Indian subjects ⁴ of Her Majesty beyond the limits of Extent. British India ;⁵ and

to all European British subjects ⁴ within the dominions of Princes and States in India in alliance with Her Majesty ;⁵

¹ Act XI of 1872 is repealed by s. 2 of this Act.

² The rendition of offenders as between different parts of Her Majesty's dominions, *e.g.*, India and Australia, is now regulated by the Fugitive Offenders Act, 1881 (44 & 45 Vict., c. 69). By s. 9 of that Act it is confined to offences punishable with rigorous imprisonment for twelve months or more.

³ As to the jurisdiction of the Courts over persons and places beyond the jurisdiction of the Indian Legislature, *e.g.*, in the case of offences committed on the high seas, *see* treatment of the question in Mayne's *Criminal Law of India*, Pt. II, Ch. II.

For definition of the term "British India," *see* the General Clauses Act, 1897 (X of 1897), s. 3, cl. (7).

⁴ As to proceedings in the case of offences by—

(a) European British subjects, in the dominions of a Prince or State in alliance with Her Majesty ;

(b) Native Indian subjects of Her Majesty, at any place beyond the limits of British India—*see* ss. 54, 188 and 189 of the Code of Criminal Procedure, 1898 (Act V of 1898).

By s. 4 of the Indian Penal Code (Act XLV of 1860) the provisions of that Code extend to every servant of the Queen "within the dominions of any Prince or State in alliance with the Queen by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been or may hereafter be made in the name of the Queen by any Government of India."

⁵ The power to legislate was conferred (a) as to all persons being Native Indian subjects of Her Majesty, *without and beyond*, as well as within, the Indian territories under the dominion of Her Majesty by s. 1 of the Indian Councils Act, 1865 (32 & 33 Vict., c. 58) ; (b) as to servants of Government in allied Native States by the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), s. 22 ; and (c) as to European British subjects in such States by the Government of India Act (28 Vict., c. 17, s. 1, *see* also the Government of India Act, 1833 (3 & 4 Will. IV, c. 85, s. 73), saved by the Indian Councils Act, 1861 (24 & 25 Vict., c. 67, s. 22), and I. L. R. 2 All. 218, as to jurisdiction over Her Majesty's Indian Army serving anywhere.

Commence-
ment.

Saving of
other laws
and of
treaties.

Repeal.

Interpreta-
tion-clause.

‘ Political
Agent. ’

“ European
British sub-
ject. ”

and it shall come into force on the passing thereof.

But nothing contained in this Act shall affect the provisions of any law or treaty for the time being in force as to the extradition of offenders ; and the procedure provided by any such law or treaty¹ shall be followed in every case to which it applies.

2. The Foreign Jurisdiction and Extradition Act, 1872, is repealed ; but XI of 1872. all existing appointments, delegations, certificates, requisitions and rules made, and all existing notifications, summonses, warrants, orders and directions issued, under that Act shall, in so far as they are consistent herewith, be deemed to have been respectively made and issued hereunder.

3. In this Act, unless there is something repugnant in the subject or context,—

“ Political Agent ” means and includes—

(1) the principal officer representing the British Indian Government in any territory or place beyond the limits of British India :

(2) any ²[officer of the Government of India or of any Local Government] appointed by the Governor General in Council or ³[the Local Government] to exercise all or any of the powers of a Political Agent under this Act for any place not forming part of British India ; and

“ European British subject ” means a European British subject as defined in the Code of Criminal Procedure.⁴

¹ The English extradition treaty with France (August, 14, 1876) expressly saves the treaty of March, 7, 1815, relating to the East Indian possessions of Great Britain and France.

The treaty of 1876 is set out in *Clarke on Extradition*, Ed. 3, Appendix, p. 89.

The treaty of 1815 is set out in *Hertslet's Treaties*, Ed. 1840, p. 273, Article IX.

The extradition treaty with Portugal determined in 1890. Negotiations are pending for a fresh treaty. As to extradition of a person on one charge and his conviction on another, see *Mayne's Criminal Law of India*, pp. 251-252.

² These words were substituted for the original words “ officer in British India ” by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V of 1896), s. 1.

³ These words were substituted for the words “ or the Governor in Council of the Presidency of Fort St. George or Bombay ” by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V of 1896), s. 1.

⁴ See now Act V of 1898, by s. 4 of which “ European British subject ” is defined as—

“ (1) any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or possessions of Her Majesty, or in the Colony of New Zealand or in the Colony of the Cape of Good Hope or Natal ; ”

“ (2) any child or grandchild of such person by legitimate descent. ”

CHAPTER II.

POWERS OF BRITISH OFFICERS IN PLACES BEYOND BRITISH INDIA.

¹ 4. The Governor General in Council may exercise any power or jurisdiction² which he for the time being has within any country or place beyond the limits of British India, and may delegate the same to any servant of the British Indian Government, in such manner and to such extent as the Governor General in Council from time to time thinks fit.

Exercise of powers of Governor General in places beyond British India and delegation thereof.

¹ 5. A notification in the Gazette of India of the exercise by the Governor General in Council of any such power or jurisdiction, and of the delegation thereof by him to any person or class of persons, and of the rules of procedure or other conditions to which such persons are to conform, and of the local area within which their powers are to be exercised, shall be conclusive proof of the truth of the matters stated in the notification.

Notification of exercise or delegation of such powers.

¹ 6. The Governor General in Council may appoint any European British subject, either by name or by virtue of his office, ³[to be a Justice of the Peace in or for any such country or place]; and every such Justice of the Peace shall have in proceedings against European British subjects, or persons accused of having committed offences conjointly with such subjects, all the powers conferred by the Code of Criminal Procedure,⁴ on Magistrates of the first class who are Justices of the Peace and European subjects.

Appointment, powers and jurisdiction of Justices of the Peace.

The Governor General in Council may direct to what Court having jurisdiction over European British subjects any such Justice of the Peace is to commit for trial.⁵

7. All Political Agents and all Justices of the Peace appointed before the twenty-fifth day of April, 1872, by the Governor General in Council or the Governor in Council of the Presidency of Fort St. George or Bombay,

Confirmation of existing Political Agents and Justices.

¹ For notifications issued in exercise of powers conferred by ss. 4, 5 and 6, *see* the six volumes of Macpherson's Lists of British Enactments in force in Native States, published by the Legislative Department from 1888 to 1894.

² As to "acts of State," *see* Mayne's *Criminal Law of India*, pp. 318-325.

³ These words were substituted for the words "in any such country or place to be a Justice of the Peace" by the Repealing and Amending Act, 1891 (XII of 1891). The amendment is to have effect as from the commencement of Act XXI of 1879, *see* s. 2 (3) of Act XII of 1891.

⁴ *See* now Act V of 1898.

⁵ For notification issued in pursuance of this power, *see* Western India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1895, p. 14.

As to trial of European British subjects in British India for offences committed in Native States, *see* the Code of Criminal Procedure, 1898 (Act V of 1898), s. 188.

(Chapter II.—Powers of British Officers in Places beyond British India.
Sec. 8. Chapter IV.—Extradition. Sec. 11).

in or for any such country or place as aforesaid, shall be deemed to be and to have been appointed, and to have and to have had jurisdiction, under the provisions of this Act

Extension of criminal law of British India to British subjects out of British India.

¹ 8. The law relating to offences and to criminal procedure for the time being in force in British India shall, subject as to procedure to such modifications as the Governor General in Council from time to time directs, extend—

- (a) to all European British subjects in the dominions of Princes and States in India in alliance with Her Majesty ; and
- (b) to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

CHAPTER III.

INQUIRIES IN BRITISH INDIA INTO CRIMES COMMITTED BY BRITISH SUBJECTS IN PLACES BEYOND BRITISH INDIA.

9. 10. [*Liability of British subjects for offences committed out of British India ; Political Agent to certify fitness of inquiry into charge ; Power to direct copies of depositions and exhibits to be received in evidence.*] *Repealed by the Code of Criminal Procedure (Act X of 1852),² s. 2 and Sch. 1 (b); see now ss. 188 to 190 of that Act*].

CHAPTER IV.

EXTRADITION.

Arrest and removal of persons other than European British subjects escaping into British India.

11. When an offence has been committed or is supposed to have been committed in any State against the law of such State by a person not being a European British subject, and such person escapes into or is in British India, the Political Agent for such State may issue a warrant for his arrest and delivery at a place and to a person to be named in the warrant—

if such Political Agent thinks that the offence is one which ought to be inquired into in such State ;

and if the act said to have been done would, if done in British India, have constituted an offence against any of the sections of the Indian Penal Code : XLV of 1860.

¹ For statutory authority to enact this section, see note ⁵ to s. 1, *supra*, p. 289.
² See now Act V of 1898.

³ Printed, General Acts, Vol. I, Ed. 1898, p. 240.

mentioned in the schedule hereto annexed, or under any other section of the said Code, or any other law, which may, from time to time, be specified by the Governor General in Council by a notification in the Gazette of India.

¹[The act of desertion from any body of Imperial Service Troops shall be deemed to be an offence in respect of which the Political Agent for the State to which such troops belong may issue a warrant under this section.]

12. Such warrant may be directed to the Magistrate of any district in which the accused person is believed to be, and shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants;² and the accused person, when arrested, shall, ³[unless released on bail in accordance with the provisions of the next following section], be forwarded to the place and delivered to the officer named in the warrant.

Direction and execution of warrant.

⁴ 12A. A Political Agent issuing a warrant for the arrest of any person under section 11 may in his discretion direct by endorsement thereon that, if such person executes a bond with sufficient sureties for his attendance before the officer mentioned in the warrant at a specified time, the Magistrate to whom the warrant is directed shall take such security and release such person from custody.

Power to Political Agent to direct security to be taken and procedure thereon.

The endorsement shall state (a) the number of sureties (if any), (b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (c) the time and place at which he is to attend before the officer mentioned in the warrant.

Whenever security is taken under this section, the Magistrate shall certify the fact to the Political Agent by whom the warrant was issued, and shall retain the bond.

⁴ 12B. If the person bound by any bond executed under the last foregoing section to appear before the officer mentioned therein does not so appear, the Magistrate may, on being satisfied as to his default, issue a warrant directing that he be re-arrested and delivered over to such officer.

Arrest on breach of bond to appear.

¹ 12C. In the case of every bond required to be executed or which may have been executed in accordance with the foregoing provisions, the powers conferred by sections 513 and 514 of the Code of Criminal Procedure, 1882,⁵ on

Application of sections 513 and 514, Act X, 1882.

X of 1882.

¹ This paragraph was added by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V of 1896), s. 2.

² See the Code of Criminal Procedure, 1898 (Act V of 1898), Ch. VI, heading B.

³ These words were inserted by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V of 1896), s. 3.

⁴ Ss. 12A, 12B and 12C were inserted by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V of 1896), s. 4.

⁵ See now Act V of 1898.

the Court which has required the execution of or has taken a bond may be exercised by the Magistrate.

Political Agent may himself dispose of case, or make over person to ordinary Courts for trial.

13. Such Political Agent may either dispose of the case himself, or, if he is generally or specially directed ¹ to do so by the Governor General in Council, or by the Governor of the Presidency of Fort St. George in Council or by the Governor of the Presidency of Bombay in Council, may give over the person so forwarded, whether he be a Native Indian subject of Her Majesty or not, to be tried by the ordinary Courts of the State in which the offence was committed ²[or, in the case of a deserter, by a duly constituted Military Court].

Requisitions for extradition by the Executive of any part of British dominions or Foreign Power.

14. Whenever a requisition is made to the Governor General in Council or any Local Government by or by the authority of the persons for the time being administering the executive government of any part of the dominions of Her Majesty, or the territory of any Foreign Prince or State, that any person accused of having committed an offence in such dominions or territory should be given up, the Governor General in Council or such Local Government, as the case may be, may issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been committed within the local limits of his jurisdiction, directing him to inquire into the truth of such accusation.

The Magistrate so directed shall issue a summons or warrant for the arrest of such person, according as the offence named appears to be one for which a summons or warrant would ordinarily issue; and shall inquire into the truth of such accusation, and shall report thereon to the Government by which he was directed to hold the said inquiry. If, upon receipt of such report, such Government is of opinion that the accused person ought to be given up to the persons making such requisition, it may issue a warrant for the custody and removal of such accused person and for his delivery at a place and to a person to be named in the warrant.

The provisions of section 10 ³ shall apply to inquiries held under this section.

Magistrate may in certain case issue warrant for ar

15. Whenever any person accused or suspected of having committed an offence out of British India is within the local limits of the jurisdiction of a Magistrate in British India, and it appears to such Magistrate that the Poli-

¹ For rules as to the issue of warrants and treatment of prisoners issued under this section in conjunction with s. 18, see Notification No. 31-J., dated 12th March, 1875, printed, p. 16 of the Western India Volume of Macpherson's Lists of British Enactments in force in Native States, Ed. 1885.

² These words were added by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V of 1896), s. 5.

³ S. 10 was repealed by the Code of Criminal Procedure, 1882 (Act X of 1883). See now s. 189 of Act V of 1898.

(Chapter IV.—Extradition. Secs. 16-17 A.)

cal Agent for any State could, under the provisions of section 11, issue a warrant for the arrest of such person, or that the persons for the time being administering the executive government of any part of the dominions of Her Majesty or the territory of any Foreign Prince or State could demand his surrender, such Magistrate may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and such evidence as would, in his opinion, justify the issue of such a warrant if the offence had been committed within the local limits of his jurisdiction.

rest of person
accused of
having com-
mitted an
offence out
of British
India.

Any Magistrate issuing a warrant under this section shall, when the offence appears or is alleged to have been committed in a State for which there is a Political Agent, send immediate information of his proceedings to such Agent, and in other cases shall at once report his proceedings to the Local Government.

Magistrate
to inform
Political
Agent or
Local Gov-
ernment.

16. No person arrested on a warrant issued by a Magistrate under section 15 shall be detained more than two months from the date of his arrest, unless within such period the Magistrate receives a warrant under section 11 from the Political Agent for any State for the delivery of such person, or an order with reference to him under section 14 from the Governor General in Council or Local Government, or such person is in accordance with law delivered up to some Foreign Prince or State.

Person
arrested to be
released after
certain time
if not pro-
ceeded
against.

At any time before the receipt of such a warrant or order the Magistrate, if he thinks fit, may, and the Magistrate if so directed by the Local Government shall, discharge the accused person.

17. The provisions of the Code of Criminal Procedure in respect of Bail. bail¹ shall apply in the case of any person arrested under section 15 in the same manner as if such person were accused of committing in British India the offence with which he is charged.

† 1882. ² 17A. Notwithstanding anything in the Code of Criminal Procedure, 1882,³ any person arrested without an order from a Magistrate and without a warrant, in pursuance of the provisions of section 54, clause *seventhly*, of the said Code,³ may, under the orders of a Magistrate within the local limits of whose jurisdiction such arrest was made, be detained in the same manner and subject to the same restrictions as a person arrested on a warrant issued by such Magistrate under section 15 of this Act.

Detention of
persons
arrested un-
der section 54,
clause sev-
enthly, Act
X of 1882.

¹ See Ch. XXXIX of the Code of Criminal Procedure, 1898 (Act V of 1898).

² S. 17A was added by the Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896 (V of 1896), s. 6.

³ See now Act V of 1898.

(Chapter V.—*Miscellaneous. Secs. 18-19. The Schedule.—Sections of the Indian Penal Code referred to in section 11.*)

CHAPTER V.

MISCELLANEOUS.

Power to
make rules.

18. The Governor General in Council may, from time to time, make rules¹ to provide for—

- (1) the confinement, diet and prison-discipline of British subjects, European or Native, imprisoned by Political Agents under this Act ;
- (2) the removal of accused persons under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them ; and
- (3) generally to carry out the purposes of this Act.

Execution of
commissions
issued by
Foreign
Criminal
Courts.

19. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in the territory of any Foreign Prince or State in like manner as it may be obtained in relation to any civil matter under the Code² of Civil Procedure, Chapter XXV ; and the provisions of that Chapter shall be construed as if the term “suit” included a proceeding against a criminal :

Provided that nothing in this section shall apply in the case of any criminal matter of a political character.

THE SCHEDULE.

SECTIONS OF THE INDIAN PENAL CODE³ REFERRED TO IN SECTION 11. XLV of 1860.

Sections 206, 208 and 224 ; sections 230 to 263, both inclusive ; sections 299 to 304, both inclusive ; sections 307, 310 and 311 ; sections 312 to 317, both inclusive ; sections 323 to 333, both inclusive ; sections 347 and 348 ; sections 360 to 373, both inclusive ; sections 375 to 377, both inclusive ; sections 378 to 414, both inclusive ; sections 435 to 440, both inclusive ; sections 443 to 446, both inclusive ; sections 464 to 468, both inclusive ; sections 471 to 477, both inclusive.

¹ See the rules made under this section in conjunction with s. 13 referred to in footnote to that section, *supra*, p. 294.

² See now Act XIV of 1882, printed, General Acts, Vol. IV.

³ Printed, General Acts, Vol. I, Ed. 1898, p. 240.

ACT No. I OF 1880.¹

[9th January, 1880.]

An Act to confer certain powers on Religious Societies.

WHEREAS it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies; It is hereby enacted as follows :—

1. This Act may be called the Religious Societies Act, 1880.

It shall come into force at once; and

shall extend to the whole of British India; ²

but nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the Governor General in Council may from time to time, by notification in the Gazette of India, exclude from the operation of this Act.

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

Preamble.

Short title.
Commence-
ment.

Local extent.

Appointment
of new
trustee in
cases not
otherwise
provided for.

¹ For Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 770; for Proceedings in Council, *see* *ibid.*, 1879, Supplement, pp. 598, 745 and 174; *ibid.*, 1880, Supplement, pp. 23 and 170.

² The Act has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to be in force in the following Scheduled Districts in the Chitliá Nágpur Division, namely :—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kollán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the present District of Palamau, which was separated in 1894.

(Secs. 3-7.)

Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.

3. Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made.

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877,¹ section 17.

III of 1877.

Property to vest in new trustees without conveyance.

4. When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner hereinbefore provided, the property subject to the trust shall forthwith, notwithstanding anything contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

Saving of existing modes of appointment and conveyance. Provision for dissolution of societies and adjustment of their affairs.

5. Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

6. Any number not less than three-fifths of the members of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith, or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities, according to the rules of such body applicable thereto, if any, and, if not, then as such body at such meeting may determine:

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

Upon a dissolution no member to receive profit.

7. If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present

¹ Printed, *supra*, p. 46.

at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

8. Nothing in sections 6 and 7 shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

Saving of
certain pro-
visions of
instruments.

9. When any question arises, either in connection with the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit.

Questions
may be
submitted to
High Court.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.¹

The costs of every application under this section shall be in the discretion of the Court.

THE SCHEDULE.

(See section 3.)

Memorandum of the appointment of new trustees of the (*describe the church, chapel, or other buildings and property*) situate at a meeting duly convened and held for that purpose (*in the vestry of the said*

18) on the _____ day of _____
 , A. B. _____ of _____ Chairman.

Names and descriptions of all the trustees on the constitution or last ap-
pointment of trustees, made the _____ day of _____
(here insert the same.)

Names and descriptions of all the trustees in whom the said (*chapel and property*) now become legally vested.

First.—Old continuing trustees :—

(here insert the same.)

Second.—New trustees now chosen and appointed :—

(here insert the same.)

Dated this day of 18 .

Signed by the said *A. B.* as Chairman of the said Meeting, at and in the presence of the said Meeting on the day and year aforesaid in the presence of—

A. B.,
Chairman of the
said Meeting.

C. D.

E. F.

¹ As to effect of a declaratory decree, *see*. s. 43 of the Specific Relief Act, 1877 (I of 1877), printed, *supra*, p. 23.

THE INDIAN MERCHANT SHIPPING ACT, 1880.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Commencement.
2. Interpretation-clause.

CHAPTER II.

UNSEAWORTHY AND UNSAFE SHIPS.

3. Saving clause.
4. Interpretation-clause.

Sending or taking Unseaworthy Ship to Sea.

5. Every person sending unseaworthy ship to sea liable to penalty.
Master taking unseaworthy ship to sea liable to penalty.
Prosecution to be by, or with consent of, Local Government.

Implied Condition of Seaworthiness in Contract of Service.

6. Obligation of owner to crew with respect to seaworthiness.
Proviso.

Detention of Unsafe Ships by the Local Government.

7. Provisional detention by Local Government.
Service of grounds on master.
8. Power to appoint surveyor.
Action on receipt of his report.
Order of final detention.
Service of report on master and appeal to Court of Survey.
9. Option to owner or master of appointing assessor to accompany surveyor.
Procedure where surveyor and assessor agree ; where they differ.
10. Power to refer to Court of Survey.

Detaining officers.

11. Detaining-officers.
Their powers generally.

SECTIONS.

12. Their power to order provisional detention and survey.
Detaining-officer to report to Local Government.

Of the Court of Survey and of Appeals and References thereto.

13. Constitution of Court of Survey.
14. The Judge.
15. The assessors.
16. Judge to summon assessors.
17. Case to be heard in open Court.
18. Powers of Judge and assessors.
19. Judge may appoint surveyor.
20. Owner or master may attend at survey.
21. Power of Judge to detain or release ship.
22. Report to Local Government by Court.
23. Power of Local Government to make rules with respect to Court of Survey.

Scientific Referees.

24. Power to appoint referee to hear appeal.
25. Option to appellant to require referee to be appointed.
26. Referee to have powers of Court of Survey.

Costs of Detention and Damages incidental thereto.

27. Liability of Government for costs and damages when ship wrongly detained.
28. Liability of shipowner for costs when ship rightly detained.
29. What included in costs of detention and survey.
30. Power to require from complainant security for costs, etc.;
Proviso as to complaint by one-fourth of crew.
31. Costs, etc., payable by Government recoverable from complainant.

Grain-cargoes.

32. Stowage of cargo of grain, etc.
Penalty for improper stowage of such cargo.

Deck and Load-lines.

33. Marking of deck-lines.
34. Marking of load-lines in case of vessels which are not coasting vessels.
35. Statement in application to Customs-officer for entry outwards to such vessels as aforesaid.
36. Marking of load-lines in case of coasting vessels.
37. Annual statement as to position of load-line on coasting vessel.
38. Modification of certain foregoing provisions.
39. Position of disc and approval of and certificate as to position thereof.
40. Rules.
41. Penalty for neglecting to mark, or submerging, load-line.
42. Penalty on master for having misleading marks.
43. Saving of ships marked in the United Kingdom.

Supplemental Provisions.

SECTIONS.

44. Release of ship at any time by Local Government.
 45. Who may enforce detention of ship.
 46. Penalty for proceeding to sea after detention.
 47. Penalty for carrying to sea officer in execution of his duty.
 48. Detained ship not to be released because British registry closed.
 49. Powers of person authorized to survey ship.
 50. Certain persons to be deemed public servants.
 51. Service of order, where there is no master or resident owner, etc.
 52. Order, etc., how to be served.
 53. Delegation of powers to Port Commissioners, etc.
-

CHAPTER III.

DISTRESSED SEAMEN.

54. Chapter to be taken as part of Act I of 1859.
Saving of provisions of Merchant Shipping Acts, 1854 and 1855.
"Local authority."
Power to suspend or dismiss.
 55. Relief of distressed seamen at Indian ports.
 56. Distressed seamen to be sent home on board British ship wanting seamen to make up its crew ;
 57. in default of such ship, on board of any ship.
 58. Name and other particulars with regard to seamen to be indorsed on agreement of British ship.
 59. Master of British ship compelled to convey and give subsistence to such seamen.
 60. Penalty for refusing so to do.
 61. Conditions under which master may claim payment.
 62. Wages and expenses incurred in respect of distressed seamen to be charged on ship to which they belong in certain cases.
 63. Mode of recovering such wages and expenses.
 64. Local Government may authorize persons to recover same.
Such persons to be deemed persons filling a public office.
 65. Board of Trade may recover such amount from master or owner in certain cases.
 66. What shall be evidence of distress and expenses incurred.
 67. Power of Governor General in Council to make rules.
-

CHAPTER IV.

SHIP SURVEYORS.

68. Local Government to appoint examiners, and to make rules as to qualification, etc., of ship surveyors.
Publication of rules.

SECTIONS.

- 69. No person to practise as ship surveyor unless qualified.
Surveyors of Lloyd's and Veritas.
 - 70. Penalty for practising as ship surveyor without certificate.
-

CHAPTER V.

RECEIVERS OF WRECK.

- 71. "Wreck" defined.
 - 72. Savings.
 - 73. Appointment of receivers.
 - 74. Rules to be observed by person finding wreck,—
 - if he be the owner;
 - if he be not the owner.
 - 75. Government or person finding wreck entitled to salvage.
Disputes concerning amount of salvage.
 - 76. Notice to be given by receiver.
 - 77. Wreck may in certain cases be sold.
 - 78. Proceeds how applied.
 - 79. Penalty for failure to give notice of, or to deliver, wreck to the receiver of wreck.
-

CHAPTER VI.

INSPECTION OF SHIPS WITH REGARD TO LIGHT AND FOG-SIGNALS.

- 80. Saving clause.
 - 81. Appointment of inspectors of lights and fog-signals.
 - 82. Notice of deficiency to be given to master or owner by such inspectors.
 - 83. Ship not to be cleared by Customs-collector till inspector certifies it is properly provided with lights, etc.
-

CHAPTER VII.

MISCELLANEOUS.

- 84. Offences triable where offender found.
 - 85. Application of provisions respecting overloading to foreign ships.
-

THE SCHEDULE.

ACT No. VII OF 1880.¹

[11th March, 1880.]

An Act to amend the law relating to Merchant Shipping and for other purposes.

Preamble.

WHEREAS it is expedient to prevent the departure of certain ships from British India ;

and whereas it is also expedient to provide for the relief of distressed seamen and apprentices at ports in British India, and for the recovery of wages due to, and expenses incurred in respect of, such seamen and apprentices in cases to which section 211² of the Merchant Shipping Act, 1854, and section 16

17 & 18 Vict.,
c. 104.
18 & 19 Vict.,
c. 91.

of the Merchant Shipping Act, 1855, do not apply of their own force ;

and whereas it is also expedient to provide in other respects hereinafter appearing for the regulation and control of merchant shipping ;

It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Indian Merchant Shipping Act, 1880.

Commencement.

And it shall come into force on the first day of June, 1880.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

“ ship : ”

³ “ ship ” includes every description of vessel used in navigation, not propelled by oars :

“ master : ”

“ master ” means any person (except a pilot or harbour-master) having for the time being the charge or control of a ship :

“ port. ”

“ port ” in any provision of this Act includes also any part of a river or channel leading to a port which for the purposes of such provision the Local Government may, from time to time, by notification in the official Gazette, declare to be included in such port.

¹ For Statement of Objects and Reasons, see Gazette of India, 1879, Pt. V, p. 881 ; for discussions in Council, see *ibid.*, Supplement, pp. 1065, 1142, and *ibid.*, 1880, Supplement, p. 717.

² Printed, Collection of Statutes relating to India, Vol. I, Ed. 1881, p. 522. See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), ss. 190 and 191.

³ Cf. the Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), s. 2, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

(Chapter II.—Unseaworthy and Unsafe Ships. Secs. 3-4.)

CHAPTER II.

UNSEAWORTHY AND UNSAFE SHIPS.

3. Nothing in this Chapter contained shall apply—

- (a) to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council ;
- (b) to any ship of less than one hundred and fifty tons register employed solely in fishing or in plying coastwise between ports situate in India and Ceylon ;
- (c) to any pleasure-yacht.

Saving
clause.

¹ The Local Government, with the previous sanction of the Governor General in Council, may from time to time, by notification in the local official Gazette, exclude from, or bring again within, the operation of this Chapter or any part thereof, subject to such modifications thereof (if any) as may be specified in the notification, any Native craft not square-rigged.²

4. In this Chapter, “British Indian ship” means a ship registered under Act No. XIX of 1838,³ Act No. X of 1841⁴ or Act No. XI of 1850,⁴ or under any other law passed by the Governor General in Council and for the time being in force for the registration of ships in India ; and

Interpreta-
tion-clause.
“British
Indian
ship :”

“British ship” includes a British Indian ship :

“manner prescribed” means such manner as the Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by rules published in the official Gazette, prescribe :

“British
ship :”
“manner
prescribed :”

a ship is “unseaworthy” within the meaning of this Chapter when the materials of which she is made, her construction, the qualifications of the master, the number and description of the crew, the weight, description and stowage of cargo, the tackle, sails, rigging, stores, ballast and other equipment generally are not such as to render her in every respect fit for the proposed voyage or service :

“unsea-
worthy :”

⁵ a ship is “unsafe” within the meaning of this Chapter when by reason of the defective condition of her hull, equipments or machinery, or by reason of

“unsafe :”

¹ This paragraph was added by the Deck and Load Lines Act, 1891 (XVII of 1891), s. 2.

² For notifications issued under this section by the—

(a) Government of Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. lxxix ;

(b) Chief Commissioner of Burma, *see* Burma Gazette, 1892, p. 548 ;

(c) Government of Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 158.

³ Printed, Bombay Code, Vol. I, Ed. 1894, p. 55.

⁴ Printed, General Acts, Vol. I, Ed. 1898, pp. 19 and 59, respectively.

⁵ *Cf.* the Merchant Shipping Act, 1876 (39 & 40 Vict., c. 80), s. 6, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

(Chapter II.—Unseaworthy and Unsafe Ships. Secs. 5-6.)

overloading or improper loading, she is unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which she is intended :

“amidships.”

¹ “amidships” means the middle of the length of the load water-line as measured from the fore side of the stem to the aft side of the stern-post.

Sending or taking Unseaworthy Ship to Sea.²

Every person sending unseaworthy ship to sea liable to penalty.

5. Every person who sends or attempts to send a British Indian ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that he used all reasonable means to insure her being sent to sea in a seaworthy state, or that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Master taking unseaworthy ship to sea liable to penalty.

Every master of a British Indian ship who knowingly takes such ship to sea in such unseaworthy state that the life of any person is likely to be thereby endangered shall, unless he proves that her going to sea in such unseaworthy state was under the circumstances reasonable and justifiable, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

For the purpose of giving such proof, every person charged under this section may give evidence in the same manner as any other witness.

Prosecution to be by, or with consent of, Local Government.

No prosecution under this section shall be instituted except by, or with the consent of, the Local Government.

Implied Condition of Seaworthiness in Contract of Service.³

Obligation of owner to crew with respect to seaworthiness.

6. In every contract of service, express or implied, between the owner of a British ship and the master or any seaman thereof, and in every instrument of apprenticeship whereby any person is bound to serve as an apprentice on board any such ship, there shall be implied, notwithstanding any agreement to the contrary, an obligation on the owner that such owner and the master, and every agent charged with the loading of such ship or the preparing thereof for sea, or the sending thereof to sea, shall use all reasonable means to secure the seaworthiness of such ship for the voyage at the time when such voyage commences, and to keep her in a seaworthy state for the voyage during the same :

¹ This definition was added by the Deck and Load Lines Act, 1891 (XVII of 1891), s. 3.

² Cf. the Merchant Shipping Act, 1876 (39 & 40 Vict., c. 80), ss. 4 and 5, respectively, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

(Chapter II.—Unseaworthy and Unsafe Ships. Secs. 7-9.)

Provided that nothing in this section shall subject such owner to any Proviso.
liability by reason of such ship being sent to sea in an unseaworthy state
where, owing to special circumstances, the so sending her to sea is reasonable
and justifiable.

Detention of Unsafe Ships by the Local Government.¹

7. The Local Government, if it has reason to believe, on complaint or Provisional
detention
by Local Gov-
ernment.
otherwise, that a British ship in any port to which it may from time to time
specially extend² this section is unsafe, may provisionally order the detention of
such ship for the purpose of being surveyed.

A written statement of the grounds of such detention shall be forthwith Service of
grounds on
master.
served on the master of such ship.

8. When the Local Government provisionally orders the detention of a ship Power to
appoint sur-
veyor.
it shall forthwith appoint some competent person to survey such ship and re-
port thereon, and, on receiving his report, may either order the ship to be
released or, if in its opinion the ship is unsafe, may order her to be finally
detained. Action on
receipt of his
report.

An order of final detention under this section may be either absolute or Order of final
detention.
until the performance of such conditions with respect to the execution of repairs
or alterations, or the unloading or reloading of cargo, as the Local Government
thinks necessary for the protection of human life ; and the Local Government
may, from time to time, vary or add to any such order :

Provided that, before an order for final detention is made, a copy of the Service of
report on
master and
appeal to
Court of
Survey.
report shall be served upon the master of the ship, and within seven days after
such service the owner or master may appeal against such report, in the manner
prescribed, to the Court of Survey (hereinafter mentioned) for the port where
the ship is detained.

9. Where a ship has been provisionally detained and a person has been Option to
owner or
master of
appointing
assessor to
accompany
surveyor.
appointed under section 8 to survey such ship, the owner or master of the ship,
at any time before such person makes such survey, may require that he shall
take with him as assessor such person as such owner or master may select,
being a person named in the list of assessors prepared under section 15, or, if

¹ Cf. the Merchant Shipping Act, 1876 (39 & 40 Vict., c. 80), s. 6, since repealed by the Mer-
chant Shipping Act, 1894 (57 & 58 Vict., c. 60).

² For ports to which the section has been extended in—

(a) the Presidency of Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed.
1896, p. lxxix ;

(b) Burma, *see* Burma Gazette, 1880, Pt. II, p. 215 ;

(c) the Presidency of Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898,
p. 159.

(Chapter II.—Unseaworthy and Unsafe Ships. Secs. 10-11.)

there is no such list, or if it is impracticable to procure the attendance of any person named in such list, a person of nautical engineering or other special skill and experience ; and

Procedure
where surveyor
and assessor
agree ;
where they
differ.

in such case, if the surveyor and assessor agree that the ship should be detained or released, the Local Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no appeal ;

but, if the surveyor and assessor differ in their report, the Local Government may act as if the requisition had not been made, and the owner or master shall have such appeal touching the report of the surveyor as is hereinbefore provided.

Power to
refer to
Court of
Survey.

10. Notwithstanding anything contained in section 8, the Local Government may at any time, when a ship has been provisionally detained, instead of following the procedure hereinbefore provided, refer the matter to the Court of Survey for the port where the ship is detained.

Detaining-officers.¹

Detaining-
officers.

² 11. For the better execution of this Chapter, the Local Government may, from time to time, appoint a sufficient number of fit persons as its officers, and may suspend or remove any of them.

Their powers
generally.

Every officer so appointed (hereinafter referred to as a detaining-officer) shall have, for the purpose of his duties under this Chapter, the following powers,³ (that is to say) :—

- (a) he may go on board any British ship and may inspect the same or any part thereof, or any of the machinery, equipments and cargo on board thereof, and may require the unloading or removal of any cargo, ballast or tackle, not unnecessarily detaining or delaying her from discharging, unloading or proceeding on any voyage ;
- (b) he may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him, may examine such persons, and may, by a like summons, require returns in writing to any enquiries he thinks fit to make ;

¹ Cf. the Merchant Shipping Act, 1876 (39 & 40 Vict., c. 80), ss. 6, 9, 10 and 12, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

² For orders issued under this section in conjunction with other sections by—

(a) the Government of Bombay, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. lxxix ;

(b) the Government of Madras, see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 159.

For detaining officers appointed under the section for the ports of Rangoon, Akyab, Moulmein and Bassein, see Burma Gazette, 1880, Pt. II, p. 215.

³ Cf. the Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), s. 15, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

(Chapter II.—Unseaworthy and Unsafe Ships. Secs. 12-15.)

- (c) he may require and enforce the production of all books, papers or documents which he considers important; and
- (d) he may administer oaths, or may, in lieu of administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination.

12. Every detaining-officer shall, in addition to the powers hereinbefore conferred, have the same power as the Local Government has under sections 7 and 8, respectively, of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her; and, if he thinks that a ship so detained by him is not unsafe, may order her to be released.

Their power to order provisional detention and survey.

Every such officer shall forthwith report to the Local Government any order made by him for the detention or release of a ship.

Detaining-officer to report to Local Government.

Of the Court of Survey and of Appeals and References thereto.¹

13. A Court of Survey for a port shall consist of a Judge sitting with two assessors.

Constitution of Court of Survey.
The Judge

14. The Judge shall be a District Judge, Judge of a Court of Small Causes, Presidency Magistrate, Magistrate of the first class or other fit person appointed in this behalf by the Local Government either generally or for any specified case.²

15. The assessors shall be persons of nautical engineering or other special skill and experience.

The assessors.

One of them shall be appointed by the Local Government either generally or in each case, and the other shall be summoned by the Judge, in the manner prescribed, out of a list of persons from time to time prepared for the purpose and published by the Local Government in the official Gazette,³ or, if there is no such list or if it is impracticable to procure the attendance of any person named in such list, shall be appointed by the Judge.

¹ Cf. the Merchant Shipping Act, 1876 (39 & 40 Vict., c. 80), ss. 7, 8, 9 and 12, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

² For orders issued under this section in conjunction with other sections by—

(a) the Government of Bombay, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. lxxix;

(b) the Government of Madras, see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 159.

For officers appointed in Burma under this section, see Burma Gazette, 1880, Pt. II, p. 216.

For officers appointed in Bombay under this section, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. lxxix.

³ For list of assessors appointed for the Court of Survey at Aden, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. lxxix.

(Chapter II.—Unseaworthy and Unsafe Ships. Secs. 16-24.)

Judge to
summon
assessors.

16. The Judge shall, on receiving notice of an appeal or a reference from the Local Government, immediately summon the assessors, in the manner prescribed, to meet forthwith.

Case to be
heard in
open Court.

17. Every such appeal and reference shall be heard in open Court.

Powers of
Judge and
assessors.

18. The Judge and each assessor shall, for the purposes of this Chapter, have the same powers as are by section 11 conferred on a detaining-officer.

Judge may
appoint
surveyor.

19. The Judge may appoint any competent person to survey the ship and report thereon to the Court.

Owner or
master may
attend at
survey.

20. The owner and master of the ship and any person appointed by the owner or master, and also any person appointed by the Local Government, may attend at any inspection or survey made in exercise or pursuance of the powers conferred by section 18 or section 19.

Power of
Judge to
detain or
release ship.

21. The Judge shall have the same power as the Local Government has to order the ship to be released or finally detained; but, unless one of the assessors concurs in an order for the detention of the ship, the ship shall be released.

Report to
Local Gov-
ernment by
Court.

22. The Judge shall report the proceedings of the Court in each case to the Local Government in the manner prescribed, and each assessor shall either sign such report or report to the Local Government the reasons for his dissent.

Power of
Local Gov-
ernment to
make rules
with respect
to Court of
Survey.

23. The Local Government may, with the previous sanction of the Governor General in Council, from time to time make rules¹ to carry into effect the provisions of this Chapter with respect to a Court of Survey, and in particular with respect to—

- (a) the procedure before the Court;
- (b) the requiring, on an appeal, of security for costs and damages;
- (c) the amount and application of fees; and
- (d) the ascertainment, in case of dispute, of the proper amount of costs under this Chapter.

Such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Scientific Referees.²

Power to
appoint
referee to
hear appeal.

24. If the Local Government is of opinion that an appeal under this Chapter involves a question of construction or design, or of scientific difficulty

¹ For Court of Survey Rules for—

(1) the Port of Bombay, *see* notification quoted at p. lxxix of the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896;

(2) Lower Burma generally, *see* Burma Gazette, 1881, Pt. I, p. 362;

(3) Presidency of Madras, *see* notification quoted at p. 159 of the Madras List of Local Rules and Orders, Vol. I, Ed. 1898.

² *Cf.* the Merchant Shipping Act, 1876 (39 & 40 Vict., c. 80), s. 15, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

(Chapter II.—Unseaworthy and Unsafe Ships. Secs. 25-30.)

or important principle, it may refer the matter to such one or more out of a list of scientific referees,¹ to be from time to time prepared by the Local Government, as may appear to possess the special qualifications necessary for the particular case, and may be selected by agreement between the Port-officer and the appellant, or, in default of any such agreement, by the Local Government; and thereupon the appeal shall be determined by the referee or referees instead of by the Court of Survey.

25. The Local Government, if the appellant in any such appeal so requires and gives security to its satisfaction to pay the costs of and incidental to the reference, shall refer such appeal to a referee or referees selected as aforesaid.

Option to appellant to require referee to be appointed. Referee to have powers of Court of Survey.

26. The referee or referees to whom an appeal is referred under section 24 or section 25 shall have the same powers as a Judge of the Court of Survey.

Costs of Detention and Damages incidental thereto.²

27. If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner, for the provisional detention of a ship, the Government shall be liable to pay to the owner of the ship his costs of and incidental to the detention and survey of the ship, and also compensation for any loss or damage sustained by him by reason of the detention or survey.

Liability of Government for costs and damages when ship wrongly detained.

28. If a ship is finally detained under this Chapter, or if it appears that a ship provisionally detained was at the time of such detention unsafe, the owner of the ship shall be liable to pay to Government its costs of and incidental to the detention and survey of the ship; and such costs shall, without prejudice to any other remedy, be recoverable as salvage is recoverable.

Liability of shipowner for costs when ship rightly detained.

29. For the purposes of this Chapter the costs of and incidental to any proceeding before a Court of Survey, and a reasonable amount in respect of the remuneration of the surveyor or officer of the Local Government, shall be deemed to be part of the costs of the detention and survey of the ship.

What included in costs of detention and survey.

30. When a complaint is made to the Local Government or a detaining-officer that a British ship is unsafe, it shall be in the discretion of such Government or officer (as the case may be) to require the complainant to give security to the satisfaction of such Government or officer for the costs and

Power to require from complainant security for costs, etc.

¹ For orders issued under this section in conjunction with other sections by—

(a) the Government of Bombay, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. lxxix;

(b) the Government of Madras, *see* Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 159.

² Cf. the Merchant Shipping Act, 1876 (39 & 40 Vict., c. 80), ss. 10 and 11, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

(Chapter II.—Unseaworthy and Unsafe Ships. Secs. 31-33.)

compensation which such complainant may become liable to pay as hereinafter mentioned:

Proviso as to
complaint by
one-fourth
of crew.

Provided that where the complaint is made by one-fourth, being not less than three, of the seamen belonging to the ship, and is not in the opinion of such Government or officer frivolous or vexatious, such security shall not be required; and such Government or officer shall, if the complaint is made in sufficient time before the sailing of the ship, take proper steps to ascertain whether the ship ought to be detained under this Chapter.

Costs, etc.,
payable by
Government
recoverable
from com-
plainant.

31. Where a ship is detained in consequence of any complaint, and the circumstances are such that the Government is liable under this Chapter to pay to the owner of the ship any costs or compensation, the complainant shall be liable to pay to the Government all such costs and compensation as the Government incurs, or is liable to pay, in respect of the detention and survey of the ship.

Grain-cargoes.¹

Stowage of
cargo of
grain, etc.

32. No cargo of which more than one-third consists of any kind of grain, corn, rice, paddy, pulse, seeds, nuts or nut-kernels (hereinafter referred to as grain-cargo) shall be carried on board any British Indian ship unless the same be contained in bags, sacks or barrels, or secured from shifting by boards or bulkheads or otherwise.

Penalty for
improper
stowage of
such cargo.

If the owner or master of any ship, or any agent of such owner who is charged with the loading of such ship or the sending her to sea, knowingly allows any grain-cargo or part of a grain-cargo to be shipped therein for carriage contrary to the provisions of this section, he shall be punished with fine which may extend to three thousand rupees.

Deck and Load-lines.

Marking of
deck-lines.

² 33. (1) Every British Indian ship shall be permanently and conspicuously marked outside with lines of not less than twelve inches in length and one inch in breadth painted longitudinally on each side amidships, or as near thereto as practicable, and indicating the position of each deck which is above water.

(2) The upper edge of each of these lines shall be level with the upper side of the deck-plank next the waterway at the place of marking.

(3) The lines shall be white or yellow on a dark ground, or black on a light ground.

¹ Cf. the Merchant Shipping Act, 1876 (39 & 40 Vict., c. 80), s. 22, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

² Ss. 34 to 43 were substituted for the original sections by the Deck and Load Lines Act, 1891 (XVII of 1891), s. 4.

VIII of 1878. ¹ 34. (1) The master of every British ship not being a coasting-vessel with-
in the meaning of the Sea Customs Act, 1878,² shall, before his ship is entered
outwards from any port in British India upon any voyage, or, if that is not
practicable, as soon after as may be, mark outside upon each of her sides amid-
ships, or as near thereto as practicable, in white or yellow on a dark ground, or
in black on a light ground, a circular disc twelve inches in diameter, with a
horizontal line eighteen inches in length drawn through its centre.

Marking of
load-lines in
case of
vessels which
are not coast-
ing-vessels.

(2) The centre of the disc shall be placed at such level below the deck-line
marked under the provisions of this Chapter or of the Merchant Shipping
<sup>39 & 40 Vict.,
s. 80.</sup> Act 1876,³ as may be approved by the Local Government, and shall indicate
maximum load-line in perfectly smooth salt-water to which it shall be lawful
to load the ship.

(3) When a ship has been marked as by this section required, she shall
be kept so marked until she next returns to a port of discharge in British
India or arrives at a port in the United Kingdom.

¹ 35. (1) Every person applying for entry of any such ship outwards shall
insert, in the form of application made to the Customs-collector, a statement in
writing of the distance in feet and inches between the centre of such disc and
the upper edge of each of the lines indicating the position of the ship's decks
which is above such centre; and, if default be made in delivering this state-
ment, the Customs-collector may refuse to enter the ship outwards.

Statement in
application to
Customs-
officer for
entry out-
wards of
such vessel
as aforesaid.

(2) A copy of this statement shall be entered in the agreement with the
crew before it is signed by any member of the crew, and no shipping-master
shall proceed with the engagement of a crew for any such ship until this entry
has been made.

(3) The master shall enter a copy of this statement in the official log-book
(if any).

VIII of 1878. ¹ 36. (1) The master of every British ship which is a coasting-vessel
within the meaning of the Sea Customs Act, 1878,² shall, before proceeding
to sea from any port, mark outside upon each of her sides amidships, or as
near thereto as practicable, in white or yellow on a dark ground, or in black
on a light ground, a circular disc twelve inches in diameter, with a horizontal
line eighteen inches in length drawn through its centre.

Marking of
load-lines in
case of coast-
ing vessels.

¹ These sections were substituted for the original sections by the Deck and Load Lines Act, 1891 (XVII of 1891), s. 4.

² Printed, *supra*, p. 168.

³ Printed, Collection of Statutes relating to India, Vol. II, Ed. 1881, p. 1018. See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 438.

(Chapter II.—Unseaworthy and Unsafe Ships. Secs. 37-39.)

(2) The centre of the disc shall be placed at such level below the deck-line marked under the provisions of this Chapter or of the Merchant Shipping Act, 1876,¹ as may be approved by the Local Government, and shall indicate the maximum load-line in perfectly smooth salt-water to which it shall be lawful to load the ship. 39 & 40 Vict., c. 80.

(3) When a ship has been marked as required by this section, she shall be kept so marked until notice has been given of an alteration.

Annual statement as to position of load-line on coasting-vessel.

² 37. (1) The master of every such ship shall also once in every twelve months, immediately before the ship proceeds to sea, send or deliver to the Collector, or other principal officer of Customs of such port as the Local Government may, from time to time, appoint in this behalf, a statement in writing of the distance in feet and inches between the centre of the disc and the upper edge of each of the lines indicating the position of the ship's decks which is above that centre.

(2) The master, before the ship proceeds to sea after any renewal or alteration of the disc, shall send or deliver to the Collector or other principal officer of Customs aforesaid notice in writing of such renewal or alteration, together with such statement in writing as beforementioned of the distance between the centre of the disc and the upper edge of each of the deck-lines.

(3) If default be made in sending or delivering any notice or statement required by this section to be sent or delivered, the master shall be liable to a fine which may extend to one thousand rupees.

Modification of certain foregoing provisions.

Position of disc and approval of, and certificate as to position thereof.

² 38. The foregoing provisions of this Chapter with respect to deck and load-lines are subject to the provisions of the two next following sections.

² 39. (1) The position of the discs mentioned in sections 34 and 36 respectively shall be fixed in accordance with the tables framed by the Load-line Committee appointed in the United Kingdom before the passing of the Merchant Shipping Act, 1890,³ subject to such allowance as may be necessary in consequence of any difference between the position of the deck-line marked under the provisions of this Chapter or of the Merchant Shipping Act, 1876,¹ and the position of the line from which free-board is measured under the said tables, and subject also to such modifications, if any, of the tables and the application thereof as may from time to time, with the previous approval of the Governor General in Council, be sanctioned by the Local Government. 53 Vict., c. 9. 39 & 40 Vict., c. 80.

¹ Printed, Collection of Statutes relating to India, Vol. II, Ed. 1881, p. 1018. See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 438.

² These sections were substituted for the original sections by the Deck and Load Lines Act, 1891 (XVII of 1891).

³ See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

(Chapter II.—Unseaworthy and Unsafe Ships. Sec. 40.)

(2) The Local Government shall from time to time appoint—

- (a) a surveyor employed by Lloyd's or by any other society, corporation or association for the survey or registry of shipping approved by the Board of Trade under section 2 of the Merchant Shipping Act, 1890,¹ and specially authorised in this behalf by Lloyd's or by such society, corporation or association, as the case may be, or
- (b) an officer specially selected by the Local Government for the purpose,²

8 Vict., c. 9.

to approve and certify on its behalf from time to time the position of any such disc as aforesaid, and any alteration thereof,

and may, with the previous sanction of the Governor General in Council, from time to time fix the fees³ to be taken in respect of any such approval or certificate.

(3) The Local Government may suspend or remove from office any surveyor or officer so appointed.

⁴ 40. (1) The Local Government, with the previous sanction of the Rules. Governor General in Council, may from time to time make rules—⁵

- (a) determining the lines or marks to be used in connection with any such disc as aforesaid, in order to indicate the maximum load-line under different circumstances and at different seasons, and declaring that the provisions of this Chapter are to have effect as if any such line were drawn through the centre of the disc ;
- (b) as to the mode in which the disc and the lines or marks to be used in connection therewith are to be marked or affixed on the ship, whether by painting, cutting or otherwise ;
- (c) as to the mode of application for, and form of, certificates under this Chapter ; and
- (d) as to the entry of such certificates, and any other prescribed particulars concerning the draught of water and free-board of the ship,

¹ See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

² For officers appointed by the Government of Burma under this clause, see *Burma Gazette*, 1892, Pt. I, p. 548.

³ For scale of fees for certificates issued under this section in—

(a) the Presidency of Bombay, see *Bombay List of Local Rules and Orders*, Vol. I, Ed. 1896, p. lxxx ;

(b) Burma, see *Burma Gazette*, 1898, Pt. I, p. 559 ;

(c) Madras, see *Madras List of Local Rules and Orders*, Vol. I, Ed. 1898, p. 159.

⁴ This section was substituted for the original section by the Deck and Load Lines Act, 1891 (XVII of 1891).

⁵ For rules made under sub-sections (1) and (2) of this section for—

(a) Burma, see *Burma Gazette*, 1896, Pt. I, pp. 506 and 619, and *ibid.*, 1897, Pt. I, p. 563 ;

(b) Madras, see *Madras List of Local Rules and Orders*, Vol. I, Ed. 1898, p. 160.

(Chapter II.—Unseaworthy and Unsafe Ships. Secs. 41-43.)

in the official log (if any) of the ship, or other publication thereof on board the ship, and as to delivering copies of such entries.

(2) Rules under clause (a) of sub-section (1) may, with respect to any class or classes of ships,—¹

(i) declare what shall be deemed to be seasons of fair weather and seasons of foul weather, respectively, for any of the purposes of the rules, and

(ii) modify the tables referred to in sub-section (1) of section 39.

(3) All rules intended to be made under this section shall previously be published in draft in such manner as may be prescribed by the Local Government, and shall not be formally promulgated for ninety days at the least after such publication, and all such rules shall, while in force, have effect as if enacted by this Act.

Penalty for neglecting to mark, or submerging, load-line.

² 41. Any master of a ship who neglects to cause his ship to be marked as by this Chapter required or to keep her so marked, or who allows the ship to be so loaded that when in perfectly smooth salt-water the centre of the disc is submerged,

and any person who conceals, removes, alters, defaces or obliterates, or suffers any person under his control to conceal, remove, alter, deface or obliterate, any of the lines or marks prescribed by or under this Chapter, except in the event of the particulars thereby denoted being lawfully altered, or for the purpose of escaping capture by an enemy,

shall be liable in respect of each such offence to a fine which may extend to one thousand rupees.

Penalty on master for having misleading marks.

² 42. The master of any ship on which any of the marks or lines prescribed by or under this Chapter is inaccurately placed so as to be likely to mislead, who does not forthwith cause such inaccuracy to be corrected, shall be liable to a fine which may extend to one thousand rupees.

Saving of ships marked in the United Kingdom.

² 43. The provisions of this Chapter as to load-lines shall not apply to ships coming from ports in the United Kingdom and having such lines fixed, marked and certified in accordance with the provisions of the law for the time being there in force, or to ships registered in a British possession and having such lines fixed, marked and certified in accordance with the provisions of an enactment passed by the Legislature of that possession, with respect to which enactment such a declaration as is mentioned in section 3 of the Merchant Shipping Act,

¹ For rules made under sub-sections (1) and (2) of this section for—

(a) Burma, see Burma Gazette, 1896, Pt. I, pp. 506 and 619, and *ibid.*, 1897, Pt. I, p. 563;

(b) Madras, see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 160.

² These sections were substituted for the original sections by the Deck and Load Lines Act, 1891 (XVII of 1891).

3 Vict., c. 9. 1890,¹ has been made by an Order of Her Majesty in Council and is for the time being in force.

Supplemental Provisions.

§ 44. The Local Government may at any time, if satisfied that a ship detained under this Chapter is not unsafe, order her to be released either upon or without any conditions. Release of ship at any time by Local Government.

§ 45. When under this Chapter a ship is authorized or ordered to be detained, any commissioned officer on full pay in the naval or military service of Her Majesty, any commander or first officer of any of Her Majesty's Indian Government ships, or any Port-officer, Harbour-master, Conservator of a port or officer of customs may detain the ship. Who may enforce detention of ship.

§ 46. If any ship after such detention, or after service on the master of any notice of or order for such detention, proceeds to sea before she is released by competent authority, the master of the ship shall be punished with fine which may extend to one thousand rupees. Penalty for proceeding to sea after detention.

47. When a ship so proceeding to sea takes to sea, when on board thereof in the execution of his duty, any person authorized under this Chapter to detain or survey such ship, the owner and master of such ship shall each be liable to pay all expenses of, and incidental to, such person being so taken to sea, and shall also each be punished with fine which may extend to one thousand rupees. Penalty for carrying to sea officer in execution of his duty.

When any owner or master is convicted of an offence under this section, the convicting Magistrate may enquire into and determine the amount payable on account of expenses by such owner or master under this section, and may direct that the same shall be recovered from him in manner provided for the recovery of fines.⁴

§ 48. When a ship has been detained under this Chapter, she shall not be released by reason of her British or British Indian register being subsequently closed. Detained ship not to be released because British registry closed.

§ 49. For the purposes of the survey of a ship under this Chapter, any person authorized to make the same may go on board the ship and inspect the same, and every part thereof, and the machinery, equipments and cargo, and may require the unloading or removal of any cargo, ballast or tackle. Powers of person authorized to survey ship.

¹ See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 444.

² Cf. the Merchant Shipping Act, 1876 (39 & 40 Vict., c. 80), s. 6, cl. (7).

³ "See the General Clauses Act, 1897 (X of 1897), s. 25." s. 34.

⁴ See the General Clauses Act, 1897 (X of 1897), s. 25.

⁵ Cf. the Merchant Shipping Act, 1876 (39 & 40 Vict., c. 80), s. 12, cl. (5). The Act has since been repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

Certain persons to be deemed public servants.

50. Every Judge, assessor, officer or surveyor under this Chapter shall be deemed to be a public servant within the meaning of the Indian Penal Code.¹ XLV of 186

Service of order, where there is no master or resident owner, etc.

² 51. Where any order, notice, statement or document is required for the purpose of any provision of this Chapter, to be served on the master of a ship, the same shall be served, where there is no master, on the owner of the ship, if he resides in the port where the ship is detained, or, if there is no owner residing there, on some agent of the owner residing there; or, where such owner or agent is unknown or cannot be found, a copy of such order, notice, statement or document shall be affixed to the mast of the ship, and shall thereupon be deemed to be duly served.

Order, etc., how to be served.

² 52. Any such order, notice, statement or document may be served by delivering a copy thereof personally to the person to be served, or by leaving the same at his last place of abode, or, in the case of a master, by leaving it for him on board the ship with the person being or appearing to be in command or charge of the ship.

Delegation of powers to Port Commissioners, etc.

53. The Local Government may, from time to time, by notification in the official Gazette, delegate,³ either absolutely or subject to such conditions or restrictions as it thinks fit, to any body of Commissioners or trustees appointed for managing the affairs of a port, all or any of the powers, and require the said body to discharge all or any of the functions, of a Local Government under the foregoing sections of this Act, except the powers conferred by section 14, the power of preparing a list of assessors under section 15 and the power of making rules, and may cancel any such notification.

While any such notification remains in force, all costs and damages which would otherwise be recoverable under this Act by or from the Government shall be recoverable in like manner by or from such body; and such body shall, notwithstanding anything to the contrary contained in any enactment now in force, credit or pay, as the case may be, the amount of any costs or damages so recovered to or from the funds held by them in trust as such body.

¹ Printed, General Acts, Vol. I, Ed. 1898, p. 240.

² Cf. the Merchant Shipping Act, 1876 (39 & 40 Vict., c. 80), s. 35, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

³ For delegation of powers of a Local Government to the Political Resident at Aden under this section, see notification quoted at page lxxx of the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896.

CHAPTER III.

DISTRESSED SEAMEN.¹

54. This Chapter shall be read with, and taken as part of, Act No. I of 1859² (*for the amendment of the law relating to Merchant Seamen.*)

Chapter to be taken as part of Act I of 1859.

17 & 18 Vict., c. 104.
18 & 19 Vict., c. 91.

But nothing in this Chapter contained applies to seamen or apprentices to whom the provisions of section 211 of the Merchant Shipping Act, 1854, or of section 16 of the Merchant Shipping Act Amendment Act, 1855,³ apply.

Saving of provisions of Merchant Shipping Acts, 1854 and 1855.

In this Chapter “local authority” means such person as the Local Government may from time to time, subject to the control of the Governor General in Council, appoint by name or in virtue of his office to exercise the powers conferred, and to perform the duties imposed, on the local authority under this Chapter.⁴

“Local authority.”

Every person so appointed may be suspended or dismissed by the Local Government which appointed him.

Power to suspend or dismiss.

55. The local authority may, subject to the rules hereinafter mentioned, provide for the subsistence—

Relief of distressed seamen at Indian ports.

(a) of all seamen and apprentices, being Native Indian subjects of Her Majesty, who have been shipwrecked, discharged or left behind at any place in British India, whether from any British ship employed in the merchant service, or from any of Her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign Power, or to the subject of any foreign State, and who are in distress in any such place; and

(b) of all seamen and apprentices not being Native Indian subjects who have been shipwrecked, discharged or left behind at any place in British India from any British ship registered in British India and who are in distress in any such place,

until such time as such authority is able to provide them with a passage as hereinafter provided.

¹ Cf. The Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), ss. 211 to 213, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

² Printed, General Acts, Vol. I, Ed. 1898, p. 167.

³ Printed, Collection of Statutes relating to India, Vol. I, Ed. 1881, p. 522. See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), ss. 191 and 192, respectively.

⁴ For officials appointed under the power conferred by this section to perform the duties imposed on the “Local Authority” under Chapter III, in—

(a) Bombay, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. lxxx;

(b) Burma, see Burma Gazette, 1880, Pt. III, p. 216;

(c) Madras, see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 160.

(Chapter III.—Distressed Seamen. Secs. 56-61.)

Distressed
seamen to be
sent home on
board British
ship wanting
seamen to
make up its
crew.

¹ 56. Subject as aforesaid, the local authority may cause such seaman or apprentices to be put on board some ship belonging to any subject of Her Majesty, which is in want of men to make up its complement, and is bound—

- (a) in the case of seamen or apprentices who are Native Indian subjects of Her Majesty, to their home or to a port in British India near their home ;
- (b) in the case of other British seamen or apprentices, to any port in the United Kingdom or the British possession to which they belong (as the case requires) ; and
- (c) in the case of seamen or apprentices not being subjects of Her Majesty to such place as the local authority, subject to the control of the Governor General in Council, may in each case determine.

In default of
such ship, on
board of any
ship.

¹ 57. In default of any such ship, the local authority may, subject as aforesaid, provide such seamen or apprentices with a passage in any ship (whether British or foreign) bound as aforesaid.

Name and
other parti-
culars with
regard to sea-
men to be
indorsed on
agreement of
British ship.

58. The local authority shall indorse on the agreement of any British ship on board of which any seaman or apprentice is sent under section 56 or section 57 the name of every person so sent on board thereof, with such particulars concerning the case as the Governor General in Council may from time to time by rule prescribe.²

Master of
British ship
compelled to
convey and
give sub-
sistence to
such seamen.

59. The master of every British ship bound as aforesaid shall receive and afford a passage and subsistence to all seamen and apprentices whom he is required to take on board his ship under the provisions of section 56 or section 57, not exceeding one for every fifty tons burden, and shall, during the passage, provide every such seaman or apprentice with a proper berth or sleeping-place effectually protected against sea and weather.

Penalty for
refusing so
to do.

60. If the master of any such ship fails or refuses to receive on board his ship, or to give a passage or subsistence to, or to provide for, any such seaman or apprentice contrary to the provisions of section 59, he shall, for each seaman and apprentice with respect to whom he so fails or refuses, be punished with fine which may extend to one thousand rupees, or, when he is tried at any place beyond the limits of British India, to the equivalent of one thousand rupees in the currency of such place.

Conditions
under which
master may
claim pay-
ment

61. When any master of a British ship has conveyed a seaman or apprentice in excess of the number (if any) wanted to make up the complement of his crew to any place in accordance with the requisition of a local authority under

¹ Cf. the Merchant Shipping Act (Amendment) Act, 1895 (18 & 19 Vict., c. 91), s. 16, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

² For rules made under this section in conjunction with s. 67, see Gazette of India, 1886, I t. I, pp. 391 and 710.

(Chapter III.—Distressed Seamen. Sec. 62.)

this Chapter, such master shall be entitled to be paid by the Secretary of State for India in Council in respect of the subsistence and passage of such seaman or apprentice such sum per diem as the Governor General in Council from time to time appoints :¹

Provided that no payment shall be made under this section except on the production of the following documents (that is to say) :—

- (a) a certificate signed by the local authority by whose direction such seaman or apprentice was received on board, specifying the name of such seaman or apprentice, and the time when he was received on board ; and
- (b) a declaration in writing by such master made and verified in manner hereinafter provided, and stating—
 - (1) the number of days during which such seaman or apprentice received subsistence and was provided for as aforesaid on board his ship ;
 - (2) the number of men and boys forming the complement of his crew ;
 - (3) the number of seamen and apprentices employed on board his ship during the time such seaman or apprentice was on board ; and
 - (4) every variation (if any) of such number.

The declaration required by this section shall, in the case of a ship conveying Native Indian subjects of Her Majesty to a port in British India, be made before a shipping-master or such other officer as the Local Government may appoint.² In other cases such declaration shall be made and verified in the same manner as declarations made under section 212 of the Merchant Shipping Act, 1854.³

62. (a) If any seaman or apprentice, being a Native Indian subject of Her Majesty and belonging to any British ship, is discharged or left behind at any place in British India without full compliance on the part of the master with all the provisions in that behalf of the law for the time being in force and becomes distressed and is relieved under the provisions of this Chapter ; or

(b) if any such seaman or apprentice, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to

Wages and expenses incurred in respect of distressed seamen to be charged on ship to which they belong in certain cases.

¹ For order fixing certain rates of payment for subsistence and passage of distressed seamen and apprentices who are sent on board a British ship under s. 57 and are in excess of the number wanted to make up the complement of a crew, see Gazette of India, 1886, Pt. I, p. 391.

² For notification appointing officers under this section in Burma, see Burma Gazette, 1880, Pt. II, p. 216.

³ Printed, Collection of Statutes relating to India, Vol. I, Ed. 1881, p. 523. See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 192.

(Chapter III.—Distressed Seamen. Secs. 63-66.)

any foreign Power or to the subject of any foreign Power, becomes distressed and is relieved as aforesaid; or

(c) if any seaman or apprentice belonging to any British ship registered in British India, and not being a Native Indian subject of Her Majesty, is discharged or left behind at any place in British India without full compliance as aforesaid, and becomes distressed and is relieved as aforesaid,

the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and, in case he should die before reaching home, for his burial, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid.

Mode of
recovering
such wages
and expenses.

63. All such wages and expenses shall be recoverable with costs either from the master of such ship or from the person who is owner thereof for the time being, or, in the case of an engagement for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made, in the same manner as other debts due to the Secretary of State for India in Council, or in the same manner and by the same form and process in which wages due to the seaman or apprentice would be recoverable by him.

Local
Government
may author-
ize persons
to recover
same.

64. The Local Government may from time to time, by notification in the official Gazette, authorize, either generally or specially, such persons as it thinks fit to sue for any such wages and expenses and recover the same.¹

Such persons
to be deemed
persons
filling a pub-
lic office.

And every person so authorized shall be entitled to sue and recover accordingly, and shall be deemed to be a person filling a public office within the meaning of the Indian Evidence Act, 1872,² section 57, clause 7.

I of 1872.

Board of
Trade may
recover such
amount
from master
or owner
in certain
cases.

65. When any such wages and expenses are due to or in respect of a seaman or apprentice mentioned in section 62, clause (c), they may, instead of being recovered by a person authorized under section 64, be recovered by the Board of Trade in manner provided by the Merchant Shipping Act, 1854, section 213,³ and when so recovered shall be paid by the said Board to the Secretary of State for India in Council.

17 & 18 Vict.
c. 104.

What shall
be evidence
of distress
and expenses
incurred.

66. In all proceedings under this Chapter, whether in India or elsewhere, the production of a certificate signed by the local authority by which any seaman or apprentice named therein was relieved, or any expenses were incurred, under this Chapter, to the effect that such seaman or apprentice was in distress,

¹ For notification issued under this section for—

(a) Madras, *see* Madras List of Local Rules and Orders, Ed. 1898, Vol. I, p. 60.

(b) Burma, *see* Burma Gazette, 1880, Pt. II, p. 217.

² Printed, General Acts, Vol. II, Ed. 1898, p. 222.

³ Printed, Collection of Statutes relating to India, Vol. I, Ed. 1881, p. 523 *See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 193.*

(Chapter III.—*Distressed Seamen. Sec. 67. Chapter IV.—Ship Surveyors. Secs. 68-69.*)

and that such expenses were incurred in respect of such seaman or apprentice, shall be sufficient evidence that such seaman or apprentice was relieved, conveyed home or buried (as the case may be) at the expense of the revenues of India.

67. The Governor General in Council may, from time to time, make rules¹ to determine under what circumstances and subject to what conditions seamen or apprentices may be relieved and provided with passages under this Chapter, and generally to carry out the provisions of this Chapter.

Power of Governor General in Council to make rules.

All such rules shall be published in the Gazette of India, and shall thereupon have the force of law.

CHAPTER IV.

SHIP SURVEYORS.

68. The Local Government may, from time to time, appoint competent persons for the ²[purpose] of examining the qualifications of persons desirous of practising the profession of a ship surveyor at any port in the territories administered by such Government, and, subject to the control of the Governor General in Council, make rules—³

Local Government to appoint examiners,

- (a) for the conduct of such examinations and the qualifications to be required,
- (b) for the grant of certificates to qualified persons,
- (c) for the fees to be paid for such examinations and certificates,
- (d) for holding enquiries into charges of incompetency and misconduct on the part of holders of such certificates, and
- (e) for the suspension and cancelment of such certificates.

and to make rules as to qualification, etc., of ship surveyors.

All such rules shall be published in the official Gazette, and shall thereupon have the force of law.

Publication of rules.

69. No person shall, in any port in which there is a person exercising the profession of a ship surveyor and holding a certificate granted under section 63,

No person to practise as ship surveyor

¹ For rules made under this section in conjunction with s. 58, see Gazette of India, 1886, Pt. I, pp. 391 and 710.

² This word was substituted for the word "purposes" by the Repealing and Amending Act, 1891 (XII of 1891).

³ For rules made under this section for—

(a) the Presidency of Bombay, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1898, p. lxxx;

(b) Burma, see Burma Gazette, 1882 and 1883, Pt. I, pp. 294 and 262, respectively;

(c) the Presidency of Madras, see Madras List of Local Rules and Orders, Ed. 1898, Vol. I, p. 160.

(Chapter IV.—Ship Surveyors. Sec. 70. Chapter V.—Receivers of Wreck. Secs. 71-72.)

unless
qualified.

Surveyors of
Lloyd's and
Veritas.

exercise such profession in such port unless he holds a certificate granted under that section :

Provided that nothing herein contained shall prevent any person employed by Lloyd's Register of British and Foreign Shipping or Bureau Veritas from discharging any of the duties of such employment, or apply to any person specially exempted by the Local Government from the operation of this section.¹

Penalty for
practising as
ship surveyor
without
certificate.

70. Any person exercising the profession of a ship surveyor in contravention of the provisions of section 69 shall be punished with fine not exceeding one thousand rupees, and shall be incapable of maintaining any suit for any fee or reward for anything done by him in such exercise of such profession.

CHAPTER V.

RECEIVERS OF WRECK.²

"Wreck"
defined.

71. In this Chapter "wreck" includes the following when found in the sea or any tidal water or on the shores thereof, that is to say:—

goods which have been cast into the sea and then sink and remain under water ;

goods which have been cast or fall into the sea and remain floating on the surface ;

goods which are sunk in the sea, but are attached to a floating object in order that they may be found again ;

goods which are thrown away or abandoned ; and

a vessel abandoned without hope or intention of recovery.

Savings.

³ 72. ⁴ * Nothing in this Chapter shall be deemed to—

(a) affect the declaration of the twenty-third day of October, 1889, in the schedule to this Act, between the Government of the United Kingdom of Great Britain and Ireland and the Government of the French Republic, with reference to the disposal of the proceeds of wrecks on their respective coasts, that declaration having been made applicable to India, or

¹ The Port Officer, Aden, has been exempted from the operation of this section, see Bombay List of Local Rules and Orders, Ed. 1896, Vol. I, pp. lxxxii.

² Cf. the Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), ss. 429, 450 and 452. See now ss. 510, 566, 518, 546, 520, 522 and 525 (2) of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

³ This section was substituted for the original s. 72 by the Indian Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s. 6.

⁴ The word "But" was repealed by the Repealing and Amending Act, 1891 (XII of 1891).

(Chapter V.—Receivers of Wreck. Secs. 73-77.)

X of 1889.

- (b) affect section 29 of the Indian Ports Act, 1889,¹ or entitle any persons to salvage in respect of any property recovered by creeping or sweeping in contravention of that section.

73. The Local Government may, from time to time, by notification in the official Gazette, with the previous sanction of the Governor General in Council, appoint such person as it thinks fit to receive and take possession of wreck and to perform such duties connected therewith as are hereinafter mentioned, within such local limits as it may from time to time prescribe.²

Appointment
of receivers.

Persons so appointed shall be called receivers of wreck.

74. Any person finding and taking possession of any wreck within any local limits for which a receiver of wreck has been so appointed ³[or bringing within such limits any wreck which has been found and taken possession of elsewhere,] shall as soon as practicable—

Rules to be
observed by
persons find-
ing wreck,

- (a) if he be the owner thereof, give the receiver of wreck notice in writing of the finding thereof and of the marks by which such wreck is distinguished ;

if he be the
owner ;

- (b) if he be not the owner of such wreck, deliver the same to the receiver of wreck.

if he be not
the owner.

75. Whenever any wreck is found by the receiver of wreck or has been delivered to him in accordance with the provisions of section 74 by any person, not being the owner thereof, the Government or such other person so delivering such wreck, as the case may be, shall be entitled to receive a reasonable sum for salvage, having regard to all the circumstances of the case.

Government
or person
finding wreck
entitled to
salvage.

Any dispute arising concerning the amount due under this section shall be determined by a Magistrate, upon application to him for that purpose by either of the disputing parties.

Disputes con-
cerning
amount of
salvage.

76. The receiver of wreck shall, on taking possession of any wreck, publish a notification, in such manner and at such place as the Local Government may from time to time prescribe in this behalf, containing a description of the same and the time at which and the place where the same was found.

Notice to be
given by
receiver.

77. If after the publication of such notification the wreck is unclaimed, or if the person claiming the same fails to pay the amount due for salvage and for charges incurred by the receiver of wreck in respect thereof,

Wreck may
in certain
cases be sold.

¹ Printed, General Acts, Vol. V.

² For notifications appointing Receivers of Wreck in—

(a) the Presidency of Bombay, *see* Bombay List of Local Rules and Orders, Ed. 1896, Vol. I, p. lxxx ;

(b) Burma, *see* Burma Gazette, 1889, Pt. I, p. 45 ;

(c) the Presidency of Madras, *see* Madras List of Local Rules and Orders, Ed. 1898, Vol. I, p. 160.

³ These words were inserted by the Indian Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s. 7.

(Chapter V.—*Receivers of Wreck. Secs. 78-79. Chapter VI.—Inspection of Ships with regard to Lights and Fog-signals. Secs. 80-81.*)

the receiver of wreck may sell such wreck by public auction, if of a perishable nature, forthwith, and, if not of a perishable nature, at any period not less than six months after such notification as aforesaid.

Proceeds how applied.

78. On the realization of the proceeds of such sale, the amount due for salvage and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the balance shall be paid to the owner of the wreck, or, if no such person appear and claim the same, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Provided that he makes his claim within one year from the date of the sale.

Penalty for failure to give notice of, or to deliver, wreck to the receiver of wreck.

79. Any person omitting to give notice of the finding of, or to deliver, any wreck to the receiver of wreck as required by section 74 shall be punished with fine which may extend to one thousand rupees, and, in the case of omission to deliver any wreck, shall, in addition to such fine, forfeit all claim to salvage, and pay to the owner of such wreck if the same is claimed, or if the same is unclaimed to the Government, a penalty not exceeding twice the value of such wreck.

CHAPTER VI.

INSPECTION OF SHIPS WITH REGARD TO LIGHTS AND FOG-SIGNALS.¹

Saving clause.

80. Nothing in this Chapter contained shall apply to any ship belonging to, or hired by, Her Majesty or the Secretary of State for India in Council or belonging to any foreign Prince or State.

Appointment of inspectors of lights and fog-signals.

81. The Local Government may, from time to time, appoint persons to inspect, in any port, ships to which the regulations for preventing collisions at sea, issued under the provisions of the Merchant Shipping Act Amendment Act, 1862,² or any other similar law for the time being in force may apply, for the purpose of seeing that such ships are properly provided with lights and with the means of making fog-signals, in pursuance of such regulations or law, and may suspend or remove any person so appointed.³

25 & 26 Vt
c. 63.

¹ Cf. the Merchant Shipping Amendment Act, 1862 (25 & 26 Vict., c. 63), s. 30, since repealed by the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

² Printed, Collection of Statutes relating to India, Vol. II, Ed. 1881, p. 733. See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

³ For orders issued under this section in conjunction with other sections by—

(a) the Government of Bombay, see the notifications quoted at p. lxxix of the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896;

(b) the Government of Madras, see the notifications quoted at p. 159 of the Madras List of Local Rules and Orders, Vol. I, Ed. 1898.

For notification appointing inspecting officers in Burma under this section, see Burma Gazette, 1880, Pt. II, p. 217.

(Chapter VI.—*Inspection of Ships with regard to Lights and Fog-signals. Secs. 82-86. Chapter VII.—Miscellaneous. Secs. 84-85.*)

Every person so appointed shall in the port for which he is appointed have, for the purposes of such inspection, the powers given to detaining-officers by section 11.

82. If any such person finds that any ship is not so provided, he shall give to the master or owner notice in writing pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same.

Notice of deficiency to be given to master or owner by such inspectors.

83. Every notice so given shall be communicated in such manner as the Local Government may direct to the Customs-collector at any port from which such ship may seek to clear; and no Customs-collector to whom such communication is made shall grant such ship a port-clearance or allow her to proceed to sea without a certificate under the hand of some person appointed as aforesaid, to the effect that the said ship is properly provided with lights and with the means of making fog-signals in pursuance of the said regulations or law.

Ship not to be cleared by Customs-collector till inspector certifies it is properly provided with lights, etc.

CHAPTER VII.

MISCELLANEOUS.

84. Every offence punishable under Chapter II, Chapter III or Chapter V may be tried in any district or presidency-town in which the offender is found, as well as in any district or presidency-town in which it might be tried under the law relating to criminal procedure for the time being in force.

Offences triable where offender found.

85. ¹ The provisions of this Act for the prevention of the overloading and improper loading of British ships shall apply to foreign ships also when in ports of British India, unless such foreign ships, if in ports of the United Kingdom, would be entitled to the benefit of an Order of Her Majesty in Council under section 4 of the Merchant Shipping Act, 1890.²

Application of provisions respecting overloading to foreign ships.

53 Vict., c. 9.

¹ The present section 85 was added by the Deck and Load Lines Act, 1891 (XVII of 1891), s. 5. The original section 85 which related to Assessors in salvage causes, etc., was repealed by the Code of Civil Procedure (Act XIV of 1882), printed, General Acts, Vol. IV.

² See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), s. 415.

*(The Schedule.)*THE SCHEDULE.¹*(See section 72.)*

Declaration between the Government of the United Kingdom of Great Britain and Ireland and the Government of the French Republic, with reference to the disposal of the proceeds of Wrecks on their respective Coasts.

The Government of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and the Government of the French Republic, desiring to regulate by a new Agreement questions relative to the disposal of the proceeds of wrecks on the coasts of the two States, have agreed to replace the Declaration signed at London on the 16th June, 1879, by the following arrangements:—

ARTICLE I.

When any ship belonging to the subjects of one of the two Contracting States is wrecked or stranded on the coast of the other, the competent local authorities shall, with as little delay as possible, bring the fact to the knowledge of the Consul General, Consul, Vice-Consul or Consular Agent nearest to the spot where the wreck or stranding has taken place.

ARTICLE II.

All operations relative to the salvage of British ships which may be wrecked or stranded on the coasts of France shall be directed by the Consuls General, Consuls, Vice-Consuls or Consular Agents of Great Britain, and reciprocally the French Consuls General, Consuls, Vice-Consuls and Consular Agents shall direct all operations relative to the salvage of ships of their nation wrecked or stranded on the coasts of Great Britain.

ARTICLE III.

If the owners of the ship and cargo, or their duly authorized representatives, shall be present and shall claim it, the Consuls General, Consuls, Vice-Consuls, and Consular Agents shall hand over to them the conduct of the salvage operations after requiring the deposit of the ship's papers, as well as the reimbursement of the expenses already defrayed, and sufficient guarantee for those incurred before the operations were handed over, and which may not have been already settled.

¹ The schedule was added by the Indian Merchant Shipping Law Amendment Act, 1891 (VI of 1891), s. 8.

(The Schedule.)

ARTICLE IV.

The intervention of the local authorities shall only take place in the two countries for the purpose of assisting the Consular authority, of maintaining order, of securing the interests of the salvors if they are strangers to the shipwrecked crews, and of assuring the due execution of the arrangements to be carried out for the entry and departure of the merchandise saved.

In the absence, and until the arrival, of the Consuls General, Consuls, Vice-Consuls or Consular Agents, the local authorities shall, moreover, take all necessary measures for the protection of the persons, and for the preservation of the articles which shall have been saved from the wreck.

This intervention shall not give rise to any charges, with the exception of those which the salvage operations and the protection of the articles saved shall have rendered necessary, and those to which national ships would, under similar circumstances, be liable. These charges shall be paid according to the circumstances of the case, either by the Agents of the Consular service, or by their owners or their proxies.

In case absence, sickness or any other cause should prevent the Agents of the Consular service from seeing to the operations and the management of the salvage, the local authorities who may be charged with the operations and management in question shall be bound to remit to the aforesaid Agents the ship's papers and the net proceeds of the ship and the cargo.

ARTICLE V.

The merchandise and articles saved shall not be liable to any customs-duties, unless they are intended for home consumption, in which case they shall pay the same duties as they would have had to pay if they had been imported in national vessels.

ARTICLE VI.

The stipulations of the present Declaration¹ shall be applicable to all the Colonies and foreign possessions of Her Britannic Majesty, excepting to those hereinafter named, that is to say, except to—

India.	Victoria.
The Dominion of Canada.	Queensland.
Newfoundland.	Tasmania.
The Cape.	South Australia.
Natal.	Western Australia.
New South Wales.	New Zealand.

Provided always that the stipulations of the present Declaration shall be

¹ The declaration has been made applicable to India, *see* s. 72, *supra*, p. 324.

made applicable to any of the above-named Colonies or foreign possessions on whose behalf notice to that effect shall have been given by Her Britannic Majesty's Representative to the French Republic within one year from the date of the signature of the present Declaration.

The stipulations of the present Declaration shall be applicable to all the Colonies and foreign possessions of France.

ARTICLE VII.

The present Declaration shall come into operation three months after the date of its signature, and shall remain in force until the expiration of one year from the day on which either party may give notice of its intention to terminate it.

In witness whereof, the undersigned Plenipotentiaries, His Excellency the Earl of Lytton, Ambassador of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Excellency M. Eugene Spuller, Minister for Foreign Affairs, have signed the present Declaration, and have affixed thereto their seals.

Done at Paris, this twenty-third day of October, 1889.

(L.S.) LYTTON.

(L.S.) E. SPULLER.

ACT No. XII of 1880.¹

[9th July, 1880.]

An Act for the appointment of persons to the office of Kází.

WHEREAS by the preamble to Act No. XI of 1864² (*An Act to repeal the law relating to the offices of Hindú and Muhammadan Law Officers and to the offices of Kází-ul-Kuzdat and of Kází, and to abolish the former offices*) it was (among other things) declared that it was inexpedient that the appointment of the Kází-ul-Kuzáat, or of City, Town or Pargana Kázís, should be made by the Government, and by the same Act the enactments relating to the appointment by the Government of the said officers were repealed; and whereas by the usage of the Muhammadan community in some parts of British India the

¹ For Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 21; for the Report of the Select Committee, *see* *ibid*, Pt. V, p. 203; for discussions in Council, *see* *ibid*, Supplement, pp. 345, 356 and 1203.

² Repealed by the Repealing Act, 1868 (VIII of 1868).

(Secs. 1-3.)

presence of Kázís appointed by the Government is required at the celebration of marriages and the performance of certain other rites and ceremonies, and it is therefore expedient that the Government should again be empowered to appoint persons to the office of Kází ; It is hereby enacted as follows :—

1. This Act may be called the Kázís Act, 1880 ;
and it shall come into force at once.

Short title.
Commence-
ment.
Local extent.

It extends, in the first instance, only to the territories administered by the Governor of Fort Saint George in Council. But any other Local Government may from time to time, by notification in the official Gazette, extend it to the whole or any part of the territories under its administration.¹

2. Whenever it appears to the Local Government that any considerable number of the Muhammadans resident in any local area desire that one or more Kázís should be appointed for such local area, the Local Government may, if it thinks fit, after consulting the principal Muhammadan residents of such local area, select one or more fit persons and appoint him or them to be Kázís for such local area.

Power to
appoint
Kázís for
any local
area.

If any question arises whether any person has been rightly appointed Kází under this section, the decision thereof by the Local Government shall be conclusive.

The Local Government may, if it thinks fit, suspend or remove any Kází appointed under this section who is guilty of any misconduct in the execution of his office, or who is for a continuous period of six months absent from the local area for which he is appointed, or leaves such local area for the purpose of residing elsewhere, or is declared an insolvent, or desires to be discharged from the office, or who refuses or becomes in the opinion of the Local Government unfit, or personally incapable, to discharge the duties of the office.

3. Any Kází appointed under this Act may appoint one or more persons as Náib Kázís.
his náib or náibs to act in his place in all or any of the matters appertaining to his office throughout the whole or in any portion of the local area for which he is appointed, and may suspend or remove any náib so appointed.

¹ The Act has been extended to certain districts, provinces and places in—

- (1) the Bombay Presidency, *see* Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 251 ;
- (2) the Lower Provinces, *see* Calcutta Gazette, 1884, Pt. I, pp. 660 and 940 ;
- (3) the Punjab, *see* Punjab Gazette, 1882, Pt. I, p. 106, and 1883, Pt. I, p. 99 ;
- (4) Burma, the Akyab District, *see* Burma Rules Manual, Ed. 1897, p. 164 ;
- (5) Assam, *see* Assam Manual of Local Rules and Orders, Ed. 1893, p. 160 ;
- (6) the North-Western Provinces and Oudh, *see* Notifications noted at p. 79 *et seq.*, of the North-Western Provinces List of Local Rules and Orders, Ed. 1894 ;
- (7) the Central Provinces—to Jubbulpore, *see* Central Provinces List of Local Rules and Orders, Ed. 1893, p. 87.

When any Kázis is suspended or removed under section 2, his náib or náibs (if any) shall be deemed to be suspended or removed, as the case may be.

4. Nothing herein contained, and no appointment made hereunder, shall be deemed—

- (a) to confer any judicial or administrative powers on any Kázis or Náib Kázis appointed hereunder; or
- (b) to render the presence of a Kázis or Náib Kázis necessary at the celebration of any marriage or the performance of any rite or ceremony; or
- (c) to prevent any person discharging any of the functions of a Kázis.

Nothing in
Act to confer
judicial or
administrative
powers; or

to render the
presence of
Kázis neces-
sary; or
to prevent
any one act-
ing as Kázis.

THE PROBATE AND ADMINISTRATION ACT, 1881.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. Personal application.
3. Interpretation-clause.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. Character and property of executor or administrator as such.
5. Administration with copy annexed of authenticated copy of will proved abroad.
6. Probate only to appointed executor.
7. Appointment express or implied.
8. Persons to whom probate cannot be granted.
9. Grant of probate to several executors simultaneously or at different times.
10. Separate probate of codicil discovered after grant of probate.
Procedure when different executors appointed by codicil.
11. Accrual of representation to surviving executor.
12. Effect of probate.
13. To whom administration may not be granted.
14. Effect of letters of administration.
15. Acts not validated by administration.

SECTIONS.

16. Grant of administration where executor has not renounced.
Exception.
 17. Form and effect of renunciation of executorship.
 18. Procedure where executor renounces or fails to accept within time limited.
 19. Grant of administration to universal or residuary legatee.
 20. Right to administration of representative of deceased residuary legatee.
 21. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
 22. Citation before grant of administration to legatee other than universal or residuary.
 23. To whom administration may be granted.
-

CHAPTER III.

OF LIMITED GRANTS.

(a).—Grants limited in Duration.

24. Probate of copy or draft of lost will.
25. Probate of contents of lost or destroyed will.
26. Probate of copy where original exists.
27. Administration until will produced.

(b).—Grants for the Use and Benefit of Others having Right.

28. Administration with will annexed to attorney of absent executor.
29. Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.
30. Administration to attorney of absent person entitled to administer in case of intestacy.
31. Administration during minority of sole executor or residuary legatee.
32. Administration during minority of several executors or residuary legatees.
33. Administration for use and benefit of lunatic.
34. Administration *pendente lite*.

(c).—For Special Purposes.

35. Probate limited to purpose specified in will.
36. Administration with will annexed limited to particular purpose.
37. Administration limited to trust-property.
38. Administration limited to suit.
39. Administration limited to purpose of becoming party to suit to be brought against executor or administrator.
40. Administration limited to collection and preservation of deceased's property.
41. Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(d).—Grants with Exception.

SECTIONS.

- 42. Probate or administration with will annexed subject to exception.
- 43. Administration with exception.

(e).—Grants of the Rest.

- 44. Probate or administration of rest.

(f).—Grants of Effects unadministered.

- 45. Grant of effects unadministered.
- 46. Rules as to grants of effects unadministered.
- 47. Administration when limited grant expired, and still some part of estate unadministered.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

- 48. What errors may be rectified by Court.
- 49. Procedure where codicil discovered after grant of administration with will annexed.
- 50. Revocation or annulment for just cause.
"Just cause."

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

- 51. Jurisdiction of District Judge in granting and revoking probates, etc.
- 52. Power to appoint Delegate of District Judge to deal with non-contentious cases.
- 53. District Judge's powers as to grant of probate and administration.
- 54. District Judge may order person to produce testamentary papers.
- 55. Proceedings of District Judge's Court in relation to probate and administration.
- 56. When probate or administration may be granted by District Judge.
- 57. Disposal of application made to Judge of district in which deceased had no fixed abode.
- 58. Probate and letters of administration may be granted by Delegate.
- 59. Conclusiveness of probate or letters of administration.
Effect of unlimited probates, etc., granted by certain Courts.
- 60. Transmission to other Courts of certificate by Court granting unlimited probate, etc.
- 61. Conclusiveness of application for probate or administration, if properly made and verified.

SECTIONS.

62. Petition for probate.
63. In what cases translation of will to be annexed to petition.
Verification of translation by person other than Court translator.
64. Petition for letters of administration.
65. Additional statements in petition for probate, etc.
66. Petition for probate or administration to be signed and verified.
67. Verification of petition for probate by one witness to will.
68. Punishment for false averment in petition or declaration.
69. District Judge may examine petitioner in person,
require further evidence, and
issue citations to inspect proceedings.
Publication of citation.
70. Caveats against grant of probate or administration.
71. Form of caveat.
72. After entry of caveat, no proceeding taken on petition until after notice
to caveator.
73. District Delegate when not to grant probate or administration.
74. Power to transmit statement to District Judge in doubtful cases where
no contention.
75. Procedure where there is contention, or District Delegate thinks pro-
bate or letters of administration should be refused in his Court.
76. Grant of probate to be under seal of Court.
Form of such grant.
77. Grant of letters of administration to be under seal of Court.
Form of such grant.
78. Administration-bond.
79. Assignment of administration-bond.
80. Time before which probate or administration shall not be granted.
81. Filing of original wills of which probate or administration with will
annexed granted.
82. Grantee of probate or administration alone to sue, etc., until same re-
voked.
83. Procedure in contentious cases.
84. Payment to executor or administrator before probate or administration
revoked.
Right of such executor or administrator to recoup himself.
85. Power to refuse letters of administration.
86. Appeals from orders of District Judge.
87. Concurrent jurisdiction of High Court.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. In respect of causes of action surviving deceased, and debts due at
death.
89. Demands and rights of suit of or against deceased survive to an
against executor or administrator.

SECTIONS.

90. Power of executor or administrator to dispose of property.
 91. Purchase by executor or administrator of deceased's property.
 92. Powers of several executors or administrators exercisable by one.
 93. Survival of powers on death of one of several executors or administrators.
 94. Powers of administrator of effects unadministered.
 95. Powers of administrator during minority.
 96. Powers of married executrix or administratrix.
-

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. As to deceased's funeral ceremonies.
 98. Inventory and account.
 99. Inventory to include property in any part of British India.
 100. As to property of, and debts owing to, deceased.
 101. Expenses to be paid before all debts.
 102. Expenses to be paid next after such expenses.
 103. Wages for certain services to be next paid, and then other debts.
 104. Save as aforesaid, all debts to be paid equally and rateably.
 105. Debts to be paid before legacies.
 106. Executor or administrator not bound to pay legacies without indemnity.
 107. Abatement of general legacies.
Executor not to pay one legatee in preference to another.
 108. Non-abatement of specific legacy when assets sufficient to pay debts.
 109. Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.
 110. Rateable abatement of specific legacies.
 111. Legacies treated as general for purpose of abatement.
-

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. Assent necessary to complete legatee's title.
113. Effect of executor's assent to specific legacy.
Nature of assent.
114. Conditional assent.
115. Assent of executor to his own legacy.
Implied assent.
116. Effect of executor's assent.
117. Executor when to deliver legacies.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

SECTIONS.

- 118. Commencement of annuity when no time fixed by will.
 - 119. When annuity, to be paid quarterly or monthly, first falls due.
 - 120. Date of successive payments when first payment directed to be made within given time, or on day certain.
 - Apportionment where annuitant dies between times of payment.
-

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

- 121. Investment of sum bequeathed where legacy, not specific, given for life.
 - 122. Investment of general legacy, to be paid at future time.
Intermediate interest.
 - 123. Procedure when no fund charged with, or appropriated to, annuity.
 - 124. Transfer to residuary legatee of contingent bequest.
 - 125. Investment of residue bequeathed for life, with direction to invest in specified securities.
 - 126. Time and manner of conversion and investment.
Interest payable until investment.
 - 127. Procedure where minor entitled to immediate payment or possession of bequest and no direction to pay to person on his behalf.
-

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

- 128. Legatee's title to produce of specific legacy.
 - 129. Residuary legatee's title to produce of residuary fund.
 - 130. Interest when no time fixed for payment of general legacy.
 - 131. Interest when time fixed.
 - 132. Rate of interest.
 - 133. No interest on arrears of annuity within first year after testator's death.
 - 134. Interest on sum to be invested to produce annuity.
-

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

- 135. Refund of legacy paid under Judge's orders.
- 136. No refund if paid voluntarily.

SECTIONS.

- 137. Refund when legacy becomes due on performance of condition within further time allowed.
 - 138. When each legatee compellable to refund in proportion.
 - 139. Distribution of assets.
Creditor may follow assets.
 - 140. Creditor may call upon legatee to refund.
 - 141. When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.
 - 142. When unsatisfied legatee must first proceed against executor, if solvent.
 - 143. Limit to refunding of one legatee to another.
 - 144. Refunding to be without interest.
 - 145. Residue after usual payments to be paid to residuary legatee.
 - 145A. Transfer of assets from British India to executor or administrator in country of domicile for distribution.
-

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

- 146. Liability of executor or administrator for devastation.
 - 147. Liability for neglect to get in any part of property.
-

CHAPTER XIV.

MISCELLANEOUS.

- 148. Provisions applied to administrator with will annexed.
- 149. Saving-clause.
- 150. Probate and administration, in case of persons exempted from Succession Act, to be granted only under this Act.
- 151. [*Repealed.*]
- 152. Grant of probate or administration to supersede certificate under Act XXVII of 1860 or Bombay Regulation VIII of 1827.
- 153. [*Repealed.*]
- 154. Amendment of Hindú Wills Act, 1870.
- 155. Validation of grants of probate and administration made in Lower Burma.
- 156. Amendment of Limitation Act, 1877.
- 157. Surrender of revoked probate or letters of administration.

ACT No. V of 1881.¹

[21st January, 1881.]

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865,² does not apply; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Probate and Administration Act, 1881.

It applies to the whole of British India ;³

and it shall come into force on the first day of April, 1881.

2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865,³ dying before, on or after the said first day of April, 1881 :

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day :

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies,⁴

Short title.

Local extent.

Commence-

ment.

Personal

application.

¹ For Statement of Objects and Reasons, see Gazette of India, 1879, Pt. V, p. 763 ; for the first Report of the Select Committee, see *ibid.*, 1880, Pt. V, p. 35 ; for discussions in Council, see *ibid.*, 1879, Supplement, pp. 593 and 743 ; 1880, pp. 515, 556 ; and *ibid.*, 1881, pp. 10, 47 & 87.

² This Act has been declared in force in the town of Mandalay by the Upper Burma Laws Act, 1886 (XX of 1886), s. 6, printed, Burma Code, Ed. 1889, p. 363 ; and in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), s. 3, printed, Baluchistan Code, Ed. 1890, p. 69 ; and ss. 153 and 154 of the Act have been declared in force in the Santhál Parganas by the Santhál Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Santhál Parganas Laws Regulation, 1886 (III of 1886), s. 2, printed, Bengal Code, Ed. 1889, Vol. I, p. 597.

It has been declared, under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to be in force in the following deregulationized Scheduled Districts in the Chutia Nagpur Division, namely :—the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, see Gazette of India, 1881, Pt. I, p. 504. The District of Lohárdaga included at this time the Palamau District, which was separated in 1894.

It has been extended, under s. 5 of the same Act, to the whole of Upper Burma except the Shan States, see Burma Gazette, 1893, Pt. I, p. 154.

³ Printed, General Acts, Vol. I, Ed. 1898, p. 468.

⁴ The Hindú Wills Act, 1870 (XXI of 1870), applies to the wills of Hindús, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay. The Act is printed in Volume II, General Acts, Ed. 1898, p. 168.

no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma,¹

and no High Court, in exercise of the concurrent jurisdiction over such local area hereby conferred,

shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.²

Interpreta-
tion-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

“Province :”

“Province” includes any division of British India having a Court of the last resort :

¹ Read now Lower Burma, *see* the Upper Burma Laws Act, 1886 (XX of 1886), s. 4, printed, Burma Code, Ed. 1898, p. 363. The Chief Commissioner is now Lieutenant-Governor of Burma, *see* Proclamation, dated 11th April, 1897, Gazette of India, 1897, Pt. I, p. 261.

² The following Courts have been authorised to receive applications for probate and letters of administration within the areas mentioned, namely :—

- in Bengal : the High Court at Calcutta, throughout the territories subject to the Lieutenant-Governor of Bengal; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the High Court may from time to time appoint as District Delegates, *see* Calcutta Gazette, 1881, Pt. I, p. 445;
- in the Andaman and Nicobar Islands : the Court of the Deputy Superintendent and the Court of the Chief Commissioner, *see* Gazette of India, 1881, Pt. I, p. 214;
- in Assam : the High Court at Calcutta, throughout Assam; all District Judges, as defined in the Act, within the Province; and such Judicial Officers as the High Court may from time to time appoint as District Delegates, *see* Assam Manual of Local Rules and Orders, Ed. 1893, p. 180;
- in the Punjab : the Chief Court, throughout the territories administered by the Lieutenant-Governor of the Punjab; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the Chief Court may from time to time appoint as District Delegates, *see* Punjab Gazette, 1881, Pt. I, p. 483;
- in Madras : the High Court at Madras, throughout the territories subject to the Governor in Council; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the High Court may from time to time appoint as Delegates, *see* Madras List of Local Rules and Orders, Ed. 1898, p. 161;
- in the Central Provinces : the Judicial Commissioner, throughout the territories under the administration of the Chief Commissioner; and all Deputy Commissioners within those territories, *see* Central Provinces List of Local Rules and Orders, Ed. 1896, p. 97;
- in Coorg : the Court of the Judicial Commissioner and the Court of the Commissioner, *see* Coorg District Gazette, 1889, Pt. I, p. 50;
- in Bombay : the High Court at Bombay, throughout the territories subject to the Governor in Council; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the High Court may from time to time appoint as District Delegates, *see* Bombay List of Local Rules and Orders, Ed. 1896, Vol. I, p. 252;
- in Ajmere-Merwara : the Court of the Chief Commissioner and the Court of the Commissioner, *see* Gazette of India, 1889, Pt. II, p. 534;
- in the N.-W. Provinces and Oudh : the High Court at Allahabad, throughout the territories subject to the Lieutenant-Governor; the Judicial Commissioner of Oudh, throughout the territories subject to the Chief Commissioner; all District Judges, as defined in the Act, within the N.-W. Provinces and Oudh; and such Judicial Officers as the High Court or the Judicial Commissioner may from time to time appoint as District Delegates, *see* N.-W. Provinces and Oudh List of Local Rules and Orders, Ed. 1894, Pt. II, p. 48;
- in Upper Burma : the Court of the Judicial Commissioner and all District Courts, *see* Burma Gazette, 1897, Pt. I, p. 289.

(Chapter II.—Of Grant of Probate and Letters of Administration. Secs. 4-5.)

of 1875. "minor" means any person subject to the Indian Majority Act, 1875,¹ "minor:" who has not attained his majority within the meaning of that Act, and any other person who has not completed his age of eighteen years; and "minority" "minority:" means the status of any such person:

"will" means the legal declaration of the intentions of the testator with "will:" respect to his property, which he desires to be carried into effect after his death:

"codicil" means an instrument made in relation to a will, and explaining, "codicil:" altering or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy" means a legacy of specified property:

"specific legacy:"
"demonstrative legacy:"

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator: "probate:"

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided: "executor:"

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and "administrator:"

"District Judge" means the Judge of a Principal Civil Court of original jurisdiction. "District Judge."

CHAPTER II.²

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such. Character and property of executor or administrator as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the Province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed. Administration with copy annexed of authenticated copy of will proved abroad.

¹ Printed, General Acts, Vol. II, Ed. 1898, p. 503.

² As to grants of letters of administration and probates to the Administrator General, see the Administrator General's Act, 1874 (II of 1874), printed, General Acts, Vol. II, Ed 1896, p. 419.

(Chapter II.—Of Grant of Probate and Letters of Administration. Secs. 6-14.)

Probate only to appointed executor. Appointment express or implied.

6. Probate can be granted only to an executor appointed by the will. 430

7. The appointment may be express or by necessary implication.

Illustrations.

(a) A wills that C be his executor if B will not. B is appointed executor by implication.

(b) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted. Grant of probate to several executors simultaneously or at different times.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

Separate probate of codicil discovered after grant of probate.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Effect of probate.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted. Effect of letters of administration.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

(Chapter II.—Of Grant of Probate and Letters of Administration. Secs. 15-21.)

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Acts not validated by administration.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Grant of administration where executor has not renounced.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

19. When the deceased has made a will, but has not appointed an executor, or

Grant of administration to universal or residuary legatee.

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

(Chapter II.—Of Grant of Probate and Letters of Administration. Secs. 22-23. Chapter III.—Of Limited Grants. Secs. 24-28.)

Citation before grant of administration to legatee other than universal or residuary. To whom administration may be granted.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.

(a).—*Grants limited in Duration.*

Probate of copy or draft of lost will.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

25. When the will has been lost or destroyed, and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where original exists.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b).—*Grants for the Use and Benefit of others having Right.*

Administration with will annexed to

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of

(Chapter III.—Of Limited Grants. Secs. 29-34.)

administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

attorney of
absent
executor.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

Administra-
tion with will
annexed to
attorney of
absent per-
son, who if
present,
would be en-
titled to
administer.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before-mentioned.

Administra-
tion to at-
torney of
absent person
entitled to
administer in
case of intes-
tacy.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administra-
tion during
minority of
sole executor
or residuary
legatee.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administra-
tion during
minority of
several exe-
cutors or
residuary le-
gatees.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestate's estates applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administra-
tion for use
and benefit of
lunatic.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator

Administra-
tion *pendente
lite.*

(Chapter III.—Of Limited Grants. Secs. 35-40.)

shall be subject to the immediate control of the Court and shall act under its direction.

(c).—For Special Purposes.

Probate limited to purpose specified in will.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Administration with will annexed limited to particular purpose.
Administration limited to trust-property.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against executor or administrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant to any person whom it thinks fit letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

(Chapter III.—Of Limited Grants. Secs. 41-47.)

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator ;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(d).—Grants with Exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

Probate or administration with will annexed subject to exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

(e).—Grants of the Rest.

44. Whenever a grant with exception, of probate, or letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of rest.

(f).—Grants of Effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Grant of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Rules as to grants of effects unadministered.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

What errors
may be rec-
tified by
Court.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

Procedure
where codicil
discovered
after grant
of adminis-
tration with
will annexed.
Revocation
or annulment
for just cause.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification and the grant altered and amended accordingly.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

"Just cause."

Explanation.—"Just cause" is—

1st, that the proceedings to obtain the grant were defective in substance ;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4th, that the grant has become useless and inoperative through circumstances ;

5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Act, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations.

(a) The Court by which the grant was made had no jurisdiction.

(b) The grant was made without citing parties who ought to have been cited.

(c) The will of which probate was obtained was forged or revoked.

(d) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f) Since probate was granted, a later will has been discovered.

(g) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

¹ The 5th clause of the *Explanation* to s. 50 was added by the Probate and Administration Act, 1889 (VI of 1889), s. 11.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration. Secs. 51-54.)

(h) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Jurisdiction of District Judge in granting and revoking probates, etc.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

Power to appoint Delegate of District Judge to deal with non-contentious cases.

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge's powers as to grant of probate and administration.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

District Judge may order person to produce testamentary papers.

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code¹ in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

IV of 1860.

and the costs of the proceeding shall be in the discretion of the Judge.

(Chapter V.—of the Practice in granting and revoking Probates and Letters of Administration. Secs. 55-59.)

Proceedings of District Judge's Court in relation to probate and administration.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as herein-after otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.¹

When probate or administration may be granted by District Judge.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of district in which deceased had no fixed abode.

57. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is ² [or are] granted,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

Effect of unlimited probates, etc., granted by certain Courts.

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Punjab, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

¹ See now Act XIV of 1882, printed, General Acts, Vol. IV.

² The words "or are" were inserted by the Repealing and Amending Act, 1891 (XII of 1891).

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration. Secs. 60-62.)

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants a certificate to the following effect :—

Transmission to other Courts of certificate by Court granting unlimited probate, etc.

“ I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at _____ [*or as the case may be*], hereby certify that on the _____ day of _____ 188_____ the High Court of Judicature at _____ [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate], of *C. D.*, late of _____ deceased, to *E. F.* of _____

and *G. H.* of _____, and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India” ;

and such certificate shall be filed by the Court receiving the same.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorising the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Conclusiveness of application for probate or administration, if properly made and verified.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections 24, 25 and 26, a copy, draft or statement of the contents thereof, annexed, and stating the time of the testator's death,

Petition for probate.

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands ;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge ; and,

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration. Secs. 63-65.)

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

In what cases translation of will to be annexed to petition.

63. In cases wherein the will, copy or draft is written in any language other than English, or than that in ordinary use in proceedings before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

Verification of translation by person other than Court translator.

“ I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof.”

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences, the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Additional statements in petition for probate, etc.

65. Every person applying to any of the Courts mentioned in the proviso to section 59 for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections 62 and 61, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration. Secs. 66-70.)

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :—

Petition for probate or administration to be signed and verified.

“ I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief.”

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following :—

Verification of petition for probate by one witness to will.

“ I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (*as the case may be*) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence).”

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law¹ for the time being in force for the punishment of giving or fabricating false evidence.

Punishment for false averment in petition or declaration.

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

District Judge may examine petitioner in person, require further evidence,

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

and issue citations to inspect proceedings.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Publication of citation.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate ;

Caveats against grant of probate or administration.

and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ;

¹ See the Indian Penal Code (Act XLV of 1860), Ch. XI, printed, General Acts, Vol. I, Ed. 1898, p. 240.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration. Secs. 71-75.)

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of
caveat.

71. The caveat shall be to the following effect :—

“Let nothing be done in the matter of the estate of *A. B.*, late of _____, deceased, who died on the _____ day of _____ at _____, without notice to *C. D.* of _____.”

After entry
of caveat no
proceeding
taken on peti-
tion until
after notice
to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Dele-
gate when
not to grant
probate or
administra-
tion.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By “contention” is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to
transmit
statement to
District
Judge in
doubtful
cases where
no contention.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure
where there
is contention
or District
Delegate

75. In every case in which there is contention or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith,

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration. Secs. 76-77.)

shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge ;

unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do ; and in that case the same shall be sent by him to the District Judge.

thinks probate or letters of administration should be refused in his Court.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following :—

Grant of probate to be under seal of Court.

“ I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the _____ day of _____ in the year _____ the last will of _____, late of _____, a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to _____, the executor in the said will named, ¹[he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint].

Form of such grant.

The _____ day of _____, 18 ____.”

77. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following :—

Grant of letters of administration to be under seal of Court.

“ I, _____, Judge of the District of _____, [or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the _____ day of _____ letters of administration (with or without the will annexed, *as the case may be*) of the property and credits of _____, late of _____, deceased,

Form of such grant.

¹ These words in s. 76 were substituted for the words “ he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date ” by the Probate and Administration Act, 1889 (VI of 1889), s. 12, printed, General Acts, Vol. V.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration. Secs. 78-81.)

were granted to _____, the father (*or as the case may be*) of the deceased,¹ [he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.]

The day of 18 .”

Administration-bond.

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court, to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Assignment of administration-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept,

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some proper person,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him ;

¹ These words in s. 77 were substituted for the words “ he having undertaken to administer the same, and to make a true inventory of the said property and credits and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date ” by the Probate and Administration Act, 1889 (VI of 1889), s. 13, printed, General Acts, Vol. V.

(Chapter V.—Of the Practice in granting and revoking Probate and Letters of Administration. Secs. 82-87.)

and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.¹

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

Grantee of probate or administration alone to sue, etc., until same revoked.

83. In any case before the District Judge in which there is contention, the ²[proceedings] shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure,³ in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Procedure in contentious cases.

84. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation be a legal discharge to the person making the same;

Payment to executor or administrator before probate or administration revoked. Right of such executor or administrator to recoup himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies,⁴ be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

Power to refuse letters of administration.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure³ applicable to appeals.

Appeals from orders of District Judge.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

Concurrent jurisdiction of High Court.

¹ For rules made by the Chief Commissioner (now Lieutenant-Governor) of Burma, see Burma Rules Manual, Ed. 1897, p. 18.

² The word "proceedings" was substituted for the word "proceeding" by the Repealing and Amending Act, 1891 (XII of 1891).

³ See now Act XIV of 1882, printed, General Acts, Vol. IV.

⁴ The Hindú Wills Act, 1870 (XXI of 1870), applies to the Wills of Hindús, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay. For the Act, see General Acts, Vol. II, Ed. 1898, p. 168.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

In respect of causes of action surviving deceased, and debts due at death.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code,¹ or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory. XLV of 1860.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the official's, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

² 90. (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

(2) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 4, or

(b) lease any such property for a term exceeding five years.

(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub-section (3), as the case may be, is voidable at the instance of any other person interested in the property.

¹ Printed, General Acts, Vol. I, Ed. 1898, p. 240.

² This section was substituted for the original s. 90 by the Probate and Administration Act, 1889 (VI of 1889), s. 14. For validation of acts under grants of administration made before the commencement of Act VI of 1889, see s. 19 of that Act, printed, General Acts, Vol. V.

(Chapter VI.—Of the Powers of an Executor or Administrator. Secs. 91-96.)

(5) Before any probate or letters of administration is or are granted under this Act there shall be endorsed thereon or annexed thereto a copy of sub-sections (1), (2) and (4), or of sub-sections (1), (3) and (4), as the case may be.

(6) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorize an executor or administrator to act otherwise than in accordance with the provisions of this section.

91. If an executor or administrator purchases, either directly or indirectly any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Powers of several executors or administrators exercisable by one.

Illustrations.

(a) One of several executors has power to release a debt due to the deceased.

(b) One has power to surrender a lease.

(c) One has power to sell the property of the deceased, moveable or immovable.

(d) One has power to assent to a legacy.

(e) One has power to endorse a promissory note payable to the deceased.

(f) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors of survivor.

Survival of powers on death of one of several executors or administrators.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

As to deceased's funeral ceremonies.

Inventory and account.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

98.¹ (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(2) The High Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code.²

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.

Inventory to include property in any part of British India.

99. In all cases where ³ [a grant has been made] of probate or letters of administration intended to have effect throughout the whole of British India, the executor or ⁴[administrator] shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India ;

and the value of such property situate in each Province shall be separately stated in such inventory ;

and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

XLV of 1860.

¹ This section was substituted for the original s. 98 by the Probate and Administration Act, 1889 (VI of 1889), s. 15, printed, General Acts, Vol. V.

² Printed, General Acts, Vol. I, Ed. 1898, p. 240.

³ These words in s. 99 were substituted for the words "it is sought to obtain a grant" by the Probate and Administration Act, 1889 (VI of 1889), s. 16, printed, General Acts, Vol. V.

⁴ The word "administrator" was substituted for the words "the person applying for administration" by the Probate and Administration Act, 1889 (VI of 1889), s. 16, printed, General Acts, Vol. V.

(Chapter VII.—Of the Duties of an Executor or Administrator. Secs. 100-109.)

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

104. Save as aforesaid, no creditor is to have a right of priority over another.

But the executor or administrator shall pay all such debts as he knows of including his own, equally and rateably, as far as the assets of the deceased will extend.

Save as aforesaid, all debts to be paid equally and rateably.

105. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity. Abatement of general legacies.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions ;

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts. Right under demonstrative legacy

109. Where there is a demonstrative legacy, and the assets are sufficient or the payment of debts and necessary expenses, the legatee has a preferential

(Chapter VII.—Of the Duties of an Executor or Administrator. Secs. 110-111. Chapter VIII.—Of the Executor's Assent to a Legacy. Secs. 112-113.)

when assets
sufficient to
pay debts and
necessary
expenses.

claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Ratable
abatement of
specific
legacies.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

Legacies
treated as
general for
purpose of
abatement.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

CHAPTER VIII.¹

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent
necessary to
complete
legatee's
title.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(a) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

Effect of
executor's
assent to
specific
legacy.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

¹ The provisions in Ch. VIII as to an executor apply also to an administrator with the will annexed, *see s. 148, infra*, p. 371.

(Chapter VIII.—Of the Executor's Assent to a Legacy. Secs. 114-116.)

This assent may be verbal, and it may be either express or implied from the conduct of the executor. Nature of assent.

Illustrations.

(a) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent. Conditional assent.

Illustrations.

(a) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied. Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor. Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator. Effect of executor's assent.

(Chapter VIII.—Of the Executor's Assent to a Legacy. Sec. 117.
Chapter IX.—Of the Payment and Apportionment of Annuities. Secs.
118-120.)

Illustrations.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy

(b) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor
when to
deliver
legacies.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.¹

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

Commence-
ment of an-
nuity when
no time fixed
by will.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When an-
nuity, to be
paid
quarterly or
monthly,
first falls
due.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

Date of
successive
payments
when first
payment
directed to be
made within
given time,
or on day
certain.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Apportion-
ment where
annuitant
dies between
times of
payment.

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

¹ The provisions in Ch. IX as to an executor apply also to an administrator with the will annexed, *see* s. 148, *infra*, p. 371.

(Chapter X.—Of the Investment of Funds to provide for Legacies.¹ Secs. 121-126.)

CHAPTER X.¹

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Investment of general legacy, to be paid at future time. Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government annuity of the specified amount shall be purchased, or,

Procedure when no fund charged with, or appropriated to, annuity.

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee of contingent bequest.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

¹ The provisions in Ch. X as to an executor apply also to an administrator with the will annexed, *see* 148, *infra*, p. 371.

(Chapter X.—Of the Investment of Funds to provide for Legacies. Sec. 127. Chapter XI.—Of the Produce and Interest of Legacies. Sec. 128.)

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards ;

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account ;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid ;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Legatee's title to produce of specific legacy.

(Chapter XI.—Of the Produce and Interest of Legacies. Secs. 129-134.)

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

Exceptions.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Interest when time fixed.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

132. The rate of interest shall be six per cent. per annum.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Rate of interest. No interest on arrears of annuity within first year after testator's death.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum to be invested to produce annuity.

CHAPTER XII.¹

OF THE REFUNDING OF LEGACIES.

Refund of
legacy paid
under
Judge's
orders.

135. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if
paid volun-
tarily.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund when
legacy be-
comes due on
performance
of condition
within fur-
ther time
allowed.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

When each
legatee com-
pellable to
refund in
proportion.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Distribution
of assets.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets,² or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution ;

¹ The provisions in Ch. XII as to an executor apply also to an administrator with the will annexed, *see* s. 148, *infra*, p. 371.

² For limitation of suits to compel a refund, *see* the Indian Limitation Act, 1877 (XV of 1877), Sch. II, No. 43, printed, *supra*, p. 90.

(Chapter XII.—Of the Refunding of Legacies. Secs. 140-145A.)

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund,¹ whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Creditor may call upon legatee to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

144. The refunding shall, in all cases, be without interest.

Refunding to be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee. Transfer of assets from British India to executor

² 145A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death,

¹ For limitation of suits to compel a refund, see the Indian Limitation Act, 1877 (XV of 1877), Sch. II, No. 43, printed, *supra*, p. 90.

² S. 145A was inserted by the Probate and Administration Act, 1890 (II of 1890), s. 16, printed, General Acts, Vol. V.

(Chapter XIII.—Of the Liability of an Executor or Administrator for Devastation. Secs. 146-147.)

or administrator in country of domicile for distribution.

and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

Liability of executor or administrator for devastation;

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

for neglect to get in any part of property.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed. Saving-clause.

149. Nothing herein contained shall—

- (a) validate any testamentary disposition which would otherwise have been invalid;
- (b) invalidate any such disposition which would otherwise have been valid;
- (c) deprive any person of any right of maintenance to which he would otherwise have been entitled; or
- (d) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

of 1865.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindu, Muhammadan, Buddhist, or person exempted under section 332 of the Indian Succession Act, 1865,¹ shall be instituted in any Court in British India except under this Act.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.

151. [*Repeal of portions of Act XXVII of 1860.*] *Rep. by the Succession Certificate Act, 1889 (VII of 1889).*

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under^{*2} Act No. XXVII of 1860,³ or Bombay Regulation No. VIII of 1827;⁴ and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Grant of probate or administration to supersede certificate under Act XXVII of 1860 or Bombay Regulation VIII of 1827.

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

¹ Printed, General Acts, Vol. I, Ed. 1898, p. 561.

² The words "the said" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

³ Act XXVII of 1860 has been repealed by the Succession Certificate Act, 1889 (VII of 1889); but see saving in s. 2 of the latter Act.

⁴ Printed, Bombay Code, Vol. I, Ed. 1894, p. 11.

153. [*Amendment of Court-fees Act, 1870 (VII of 1870).*] *Rep. by the Succession Certificate Act, 1889 (VII of 1889).*

Amendment
of Hindu
Wills Act,
1870.

154. The following amendments shall be made in the Hindu Wills Act, 1870¹ (namely) :—

XXI of 1870.

- (a) for the portion of section 2 commencing with the words “sections one hundred and seventy-nine” and ending with the words “administrator with the will annexed,” the words “and section one hundred and eighty-seven” shall be substituted;
- (b) the third clause of section 3 and the last clause of section 6 shall be repealed;
- (c) in section 6, for the words “one hundred and three and one hundred and eighty-two” the words “and one hundred and three” shall be substituted.

Validation
of grants of
probate and
administra-
tion made
in British
Burma.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindu, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865,² which, before this Act comes into force, have been made in British Burma,³ shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law. X of 1865.

Amendment
of Limitation
Act, 1877.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43,⁴ after the figures “321,” the following shall be inserted, namely,—“or under the Probate and Administration Act, 1881, section 139 or 140.” XV of 1877.

Surrender of
revoked pro-
bate or letters
of adminis-
tration.

⁵ 157. (1) When a grant of probate or letters of administration is revoked or annulled under this Act, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.

¹ Printed, General Acts, Vol. II, Ed. 1898, p. 168.

² Printed, General Acts, Vol. I, Ed. 1898, p. 468.

³ Read now “Lower Burma,” see the Upper Burma Laws Act, 1886 (XX of 1886), s. 4, printed, Burma Code, Ed. 1889, p. 368.

⁴ Printed, *supra*, p. 90.

⁵ S. 157 was added by the Probate and Administration Act, 1889 (VI of 1889), s. 17, printed, General Acts, Vol. V.

ACT No. VI OF 1881.¹

[21st January, 1881.]

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases ; It is hereby enacted as follows :—

1. This Act may be called the District Delegates Act, 1881.

It extends to the whole of British India ;²

and it shall come into force on the first day of April, 1881.

of 1865.

2. After section 235 of the Indian Succession Act, 1865,³ the following section shall be added :—

“ 235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe :

“ Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

“ Persons so appointed shall be called District Delegates. ”

of 1865.

3. After section 241 of the said Act the following section shall be added :—

“ 241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such delegate.”

¹ For Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 766 ; for discussions in Council *see ibid.*, Supplement, 1879, pp. 595 and 743 ; *ibid.*, 1880, pp. 515 and 556 ; and *ibid.*, 1881, pp. 1047 and 67.

² The Act has been declared, under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to be in force in the following deregulationized Scheduled Districts in the Chutia Nagpur Division, namely :—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The Lohárdaga District included at this time the Palamanu District, which was separated in 1894.

³ Printed, General Acts, Vol. I, p. 468.

⁴ Cf. the Probate and Administration Act, 1881 (V of 1881), s. 52, printed, *supra*, p. 349.

⁵ Cf. *ibid.*, s. 58, *supra*, p. 350.

Short title.

Extent.

Commence-
ment.Addition of
section after
section 235 of
Succession
Act.Power to
appoint Dele-
gate of Dis-
trict Judge
to deal with
non-con-
tention-
ous cases.Addition of
section after
section 241 of
same Act.Probate and
letters of ad-
ministration
may be
granted by
Delegate.

(Secs 4-7.)

Addition to
sections 244
and 246 of
same Act.

4. To sections 244 and 246 of the said Act, respectively, the following X of 1865.
words shall be added :—

1“ and, when the application is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate.”

Substitution
of section for
section 251 of
same Act.

5. For section 251 of the said Act the following section shall be substi- X of 1865.
tuted :—

Caveats
against grant
of probate or
administra-
tion.

2“ 251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate ; and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge ; and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.”

Amendment
of section 253
of same act.

6. In section 253 of the said Act,³ after the word “ Judge ” the words X of 1865.
“ or officer,” and after the word “ made ” the words “ or notice has been given of its entry with some other Delegate,” shall be inserted.

Addition of
sections after
section 253 of
same Act.
District Dele-
gate when
not to grant
probate or ad-
ministration.

7. After section 253 of the said Act the following sections shall be X of 1865.
added :—

4“ 253A. A District Delegate shall not grant probate or letters of adminis-
tration in any case in which there is contention as to the grant, or in which it
otherwise appears to him that probate or letters of administration ought not
to be granted in his Court.

“ *Explanation.*—By ‘ contention ’ is understood the appearance of any
one in person, or by his recognized agent, or by a pleader duly appointed to
act on his behalf, to oppose the proceeding.

Power to
transmit
statement
to District
Judge in
doubtful
cases where
no conten-
tion.

5“ 253B. In every case in which there is no contention, but it appears to
the District Delegate doubtful whether the probate or letters of administration
should or should not be granted, or when any question arises in relation to the
grant, or application for the grant, of any probate or letters of administration,
the District Delegate may, if he thinks proper, transmit a statement of the
matter in question to the District Judge, who may direct the District Delegate

¹ Cf. the Probate and Administration Act, 1881 (V of 1881), ss. 62 and 64.

2	“	“	“	“	s. 70.
3	“	“	“	“	s. 72.
4	“	“	“	“	s. 73.
5	“	“	“	“	s. 74.

to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

“253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.”

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

f 1865. 8. In the said Act, sections 254 and 255, respectively,² after the words “I, Judge of the District of _____,” the words “[or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)]”; and in section 308,³ after the words “District Judge, by whom” the words “or by whose District Delegate,” shall be inserted.

Amendment of sections 254, 255 and 308 of same Act.

f 1865. 9. In the said Act, sections 246, 250, 255 and 259, after the words “District Judge,” and in section 250 and section 254 (when it first occurs), after the word “Judge,” the words⁴ “or District Delegate” shall be inserted, respectively.

Introduction of the words “or District Delegate” in certain sections of same Act.

ACT No. IX OF 1881.⁵

[25th February, 1881.]

An Act to amend the Administrator General's Act, 1874.

WHEREAS Hindus, Muhammadans and Buddhists are exempted from the Preamble.

¹ *Of the Probate and Administration Act, 1881 (V of 1881), s. 75.*

² “ ” ” ” ss. 76 and 77.

³ “ ” ” ” s. 127.

⁴ “ ” ” ” ss. 64, 69, 76, 77 and 81.

⁵ For Statement of Objects and Reasons, see Gazette of India, 1880, Pt. V, p. 201; for Proceedings in Council, see *ibid*, Supplement, pp. 1151, 1207; and *ibid*, 1881, p. 246.

This Act has been declared, under s. 3 (a) of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to be in force in the following deregulationized Scheduled Districts in the Chutia Nârpur Division, namely:—

the Districts of Hazáribágh, Lohárdaga and Mánbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, see Gazette of India, 1881, Pt. I, p. 504. The Lohárdaga District included at this time the Palamau District, which was separated in 1894.

As to extension of the Act as part of the principal Act (II of 1874), see footnote to that Act as printed in General Acts, Vol. II, Ed. 1898, p. 419.

(Secs. 1-4.)

operation of certain provisions of the Administrator General's Act, 1874,¹ but II of 1874. are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindus, Muhammadans and Buddhists ; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing ; It is hereby enacted as follows :—

Short title.
Commence-
ment.

1. This Act may be called the Administrator General's Act, 1881 : and shall come into force at once.

Amendment
of sections
16, 17, 18
and 64 of
Act No. II of
1874.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the II of 1874. word " Muhammadan " and the words " or Buddhist," wherever they occur, the word " Pársí " shall be inserted.

New section
inserted after
section 23 of
same.

3. After section 23 of the same Act the following section shall be II of 1874. inserted :—

Effect of
probate or
letters grant-
ed to Admin-
istrator
General.

" 23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property, to such Administrator General : Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

" Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

New section
substituted
for section 28
of same.
Distribution
of assets.

4. For section 28 of the same Act the following section shall be sub- II of 1874. stituted :—

" 28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims,

(Secs. 6-9.)

be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

5. [*Amendment of sections 36 and 37 of same.*] *Rep. by the Probate and Administration Act, 1890, s. 11 (2), and the Repealing and Amending Act, 1891 (XII of 1891).*

I of 1874.

6. In section 38 of the same Act, for the words "such certificate" the words "certificate under section 36 or 37" shall be substituted;¹ * * * *

Amendment of section 38 of same.

II of 1874.

7. After section 55 of the same Act the following section shall be inserted:—

New section inserted after section 55 of same.

"55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

Commission on assets collected beyond Presidency.

II of 1874.

8. Before section 61 of the same Act the following section shall be inserted:—

New section inserted before section 61 of same.

"60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

Power to examine on oath.

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

Saving of letters and certificates already granted.

¹ The words "and the words 'which oath or affirmation the Administrator General is hereby authorized to administer or take' shall be repealed" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

(Secs. 1-4.)

ACT No. XI OF 1881.¹

[25th February, 1881.]

An Act to give power to prohibit the levy of municipal taxes in certain cases.

Preamble.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Municipal Taxation Act, 1881.

Local extent.

It extends to the whole of British India ;

Commence-
ment.

and shall come into force at once.

“Municipal
Committee”
defined.

2. In this Act “Municipal Committee” includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force. -

Power to
prohibit levy
of tax.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit² the levy by a Municipal Committee of any specified tax—

(a) payable by any person subject to the Army Discipline and Regulation Act, 1879,³ or the Indian Articles of War,⁴ who is compelled by the exigencies of military duty to reside within the limits of a municipality ; or

44 & 45 Vict.,
c. 58.
V of 1869.

(b) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

Secretary of
State in
Council to
pay taxes
referred to in
section 3,
clause (a).

⁵ 4. So long as any order made under section 3, prohibiting the levy of a tax on any person mentioned in clause (a) of that section, remains in force the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person :

¹ For Statement of Objects and Reasons, see Gazette of India, 1880, Pt. V, p. 193; for Proceedings in Council, see *ibid.*, Supplement, pp. 904 and 915; and *ibid.*, 1881, Supplement, p. 250.

² For instance of such orders relating to the Military, see Bombay Gazette, 1881, Pt. I, p. 757, Notification No. 162.

³ See now the Army Act (44 & 45 Vict., c. 58), s. 191 (3), printed, Collection of Statutes relating to India, Ed. 1881, Supplement, p. 22.

⁴ Printed, General Acts, Vol. II, Ed. 1898, p. 38.

⁵ Nothing in ss. 4 and 5 apply to any area subject to a Municipal Committee which is comprised in a Cantonment, see s. 20 (2) of the Cantonments Act, 1889 (XIII of 1889), printed, General Acts, Vol. V.

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound, by the regulations of the service to which he belongs, to keep.

5. So long as any order made under section 3, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

Payments to be made in lieu of taxes referred to in section 3, clause (b).

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

Decision of questions arising under this Act.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

THE INDIAN FACTORIES ACT, 1881.

CONTENTS.

PREAMBLE.

Preliminary.

SECTIONS.

1. Short title and local extent.
2. Interpretation-clause.

Inspector and certifying Surgeons.

3. Inspectors.
4. Powers of Inspectors.
5. Certifying Surgeons.

All Operatives.

SECTIONS.

- 5A. Limited stoppage of work daily in certain circumstances.
- 5B. Holidays.

Women.

- 6. Employment of women.

Children.

- 7. Employment of children.
- 8. Prohibition of employment of child in certain dangerous work.
- 9. Register of children in a factory.

Women and Children.

- 10. Provisions supplementary to sections 6 and 7.
- 11. Prohibition of employment of woman or child in two factories on same day.

Fencing.

- 12. Fencing.

Notices.

- 13. Notice to be given of accidents.
- 14. Person beginning to occupy factory to give notice.

Penalties.

- 15. Penalties.
- 16. Burden of proof as to age.
Certifying Surgeon's declaration in writing.
- 17. Occupier primarily liable for breaches of Act or orders or rules thereunder.

Miscellaneous.

- 18. Power to make rules.
- 19. Crown factories.
- 20. Power to Local Government to extend definition of "factory."

ACT No. XV OF 1881.¹

[15th March, 1881.]

An Act to regulate labour in Factories.

WHEREAS it is expedient to regulate labour in factories ; It is hereby enacted Preamble.
as follows :—

Preliminary.

1. This Act may be called the Indian Factories Act, 1881.

It applies to the whole of British India * * * *²

Short title
and local
extent.

2. In this Act, unless there is something repugnant in the subject or Interpretation-clause.
context,—

“factory” means any premises (other than indigo factories or premises situated on, and used solely for the purposes of, a tea or coffee plantation) wherein is carried on, for not less than four months in the whole in any one year, any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, transport or sale, any article or part of an article; and

(a) wherein steam, water or other mechanical power is used in aid of any such process ; and

³[(b) wherein, subject to the provisions of section 20, not less than fifty persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process ; and]

every part of a factory shall be deemed to be a factory, except any part used exclusively as a dwelling :

“child” means a person under the age of ⁴[fourteen] years ;

“child” ;

“mill-gearing” includes every shaft, whether up-right, oblique or horizontal, and every wheel, drum, pulley, rope, driving-strap or band, by which the motion of the first moving power is communicated to any machine :

“mill-gearing” ;

¹ For the Statement of Objects and Reasons, see Gazette of India, 1879, Pt. V, p. 946 ; for the Report of the Select Committee, see *ibid.*, 1881, Pt. V, p. 127 ; for discussions in Council, see *ibid.*, 1879, Supplement, pp. 1285 and 1382, and *ibid.*, 1881, Supplement, p. 385.

² References to this Act are to be read as references to the Act as amended by the Indian Factories Act, 1891 (XI of 1891), see s. 19, Act XI.

³ The words “and shall come into force on the first day of July, 1881,” were repealed by the Indian Factories Act, 1891 (XI of 1891), s. 2.

⁴ This cl. (b) was substituted for the original clause by the Indian Factories Act, 1891 (XI of 1891), s. 3. That clause ran as follows :—“wherein not less than one hundred persons are on any day simultaneously employed in any manual labour in, or incidental to, any such process ; and”.

⁵ The word “fourteen” was substituted for the word “twelve” by the Indian Factories Act, 1891 (XI of 1891), s. 5.

(Inspectors and certifying Surgeons. Secs. 3-4.)

"employed". a ¹[person] who works in a factory, whether for wages or not, * ² in a manufacturing process or handicraft, or in cleaning any part of the factory used for any manufacturing process or handicraft or in cleaning or oiling any part of the machinery or in any other kind of work whatsoever incidental to, or connected with, the manufacturing process or handicraft, or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall be deemed to be employed therein within the meaning of this Act.

Inspectors and certifying Surgeons.

Inspectors.

3. ³The Local Government may in its discretion, by notification ⁴ in the official Gazette, appoint, ⁵[by name or by office,] such persons as it thinks fit to be Inspectors of factories within such local limits as it may assign to such Inspectors, and may suspend or dismiss any persons so appointed.

⁶[The District Magistrate shall, in virtue of his office, be an Inspector of all factories, if any, in his district.]

Such Inspectors shall be deemed public servants within the meaning of the Indian Penal Code,⁷ and shall be officially subordinate to such authority as the Local Government may from time to time indicate in this behalf. XLV of 1860.

Powers of Inspector.

4. An Inspector of Factories may, within the local limits for which he is appointed,—

⁸(a) enter, with such assistants (if any) as he thinks fit, any factory whenever he has reason to believe that any person is employed therein ;

¹ The word "person" was substituted for the word "child" in the definition of the word "employed" by the Indian Factories Act, 1891 (XI of 1891), s. 4 (1). Cf. the Factories and Workshop Act, 1878 (41 & 42 Vict., c. 16), s. 94.

² The word "either," in the definition of the word "employed," was repealed by the Indian Factories Act, 1891 (XI of 1891), s. 4 (2).

³ Cf. the Factories Act, 1833 (3 & 4 Will. IV., c. 103), s. 17. This Act had, however, at this period been repealed some time.

⁴ For notifications issued under this section for—

(1) Lower Burma, see Burma Rules Manual, Ed. 1897, pp. 154 and 155 ;

(2) Bombay, see Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, pp. 252-254 ;

(3) Madras, see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 161 ; and

(4) North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 90.

⁵ These words in s. 3 were inserted by the Indian Factories Act, 1891 (XI of 1891), s. 6 (1).

⁶ This paragraph was substituted for the original paragraph by the Indian Factories Act, 1891 (XI of 1891), s. 6 (2). That paragraph ran as follows :—

"In default of such appointment, the Magistrate of the district shall, in virtue of his office, be Inspector of all factories (if any) in the district."

⁷ Printed, General Acts, Vol. I, Ed. 1898, p. 240.

⁸ Cf. the Factories Act, 1844 (7 & 8 Vict., c. 15), s. 3 ; the Print Works Act, 1845 (8 & 9 Vict., c. 29), s. 4 ; and the Workshop Regulation Act, 1867 (30 & 31 Vict., c. 146), s. 10. At the time Act XV of 1881 was passed, these Acts, on sections of which s. 4 was based, had long been repealed.

(Inspectors and certifying Surgeons. Sec. 5. All Operatives. Sec. 5A.)

- (b) make such examination of the premises and machinery, and of the registers hereinafter prescribed, and take on the spot or otherwise such evidence of any person as such Inspector may deem necessary for carrying out the ¹[purposes] of this Act;
- (c) order that any person shall not be employed in a factory when he has reason to believe that such employment would be in contravention of this Act,—

until the age of such person has been certified in the manner hereinafter provided to be above ²[nine] years, or
for more than the time allowed by this Act for the employment of children, until his age has been so certified to be above ³[fourteen] years.

5. The civil surgeon or such other person practising medicine or surgery as the Local Government may from time to time appoint in this behalf for any local area ⁴ (hereinafter called the certifying surgeon) shall, at the request of any person employed or desirous of being employed in a factory situate in such local area, or of the parent or guardian of such person, ⁵[and on payment by such person of such fee, if any, as may from time to time be prescribed by the Governor General in Council by notification in the Gazette of India,] examine such person and grant him a certificate, stating whether his age, as nearly as it can be ascertained from such examination, is above or below ²[nine] years, or ³[fourteen] years, as the case may be.

Certifying
surgeons.

All Operatives.⁶

⁶ 5A. ⁷ (1) In every factory, except a factory in which a system of Limited stop-
page of work

¹ The word "purposes" was substituted for the word "provisions" by the Indian Factories Act, 1891 (XI of 1891), s. 7.

² The word "nine" was substituted for the word "seven" by the Indian Factories Act, 1891 (XI of 1891), s. 9.

³ The word "fourteen" was substituted for the word "twelve" by the Indian Factories Act, 1891 (XI of 1891), s. 5.

⁴ For notifications issued under this power for—

(1) Bombay, see the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896, p. 255;

(2) Lower Burma, see Burma Rules Manual, Ed. 1897, p. 155;

(3) Madras, see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, pp. 161 and 162;
and

(4) North-Western Provinces and Oudh, see North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, p. 90.

⁵ These words were inserted by the Indian Factories Act, 1891 (XI of 1891), s. 8. For notification issued under this power, see Gazette of India, 1892, Pt. I, p. 67.

⁶ This heading was substituted for the original heading to s. 6, and ss. 5A to 11, both inclusive, were substituted for the original ss. 6 to 11, both inclusive, by the Indian Factories Act, 1891 (XI of 1891), s. 10.

⁷ The provisions of this section have been declared not to apply to kilns connected with potteries, see Gazette of India, 1893, Pt. I, p. 663.

(*All Operatives. Sec. 5B. Women. Sec. 6.*)

daily in
certain cir-
cumstances.

employment in shifts or sets approved by the local Inspector is in force, there shall between noon and two o'clock in the afternoon be a stoppage of work for a full half-hour :

(2) Provided that nothing in this section shall apply to any factory of a class to which the Governor General in Council has, by notification in the Gazette of India, declared this section not to apply.

Holidays.

¹ 5B. (1) No person shall be employed in any factory on a Sunday :

(2) Provided as follows :—

- (a) any manager, foreman, mechanic, artisan or labourer may be employed in a factory on a Sunday in examining or repairing, or in supervising or aiding in the examination or repair of, any machinery or other thing whatsoever necessary for the carrying on of the work performed in the factory ;
- (b) any person may be employed in a factory on a Sunday if he has had or will have a holiday for a whole day on one of the three days immediately preceding or succeeding the Sunday :
- (c) the Local Government may from time to time, by notification in the official Gazette, declare ² sub-section (1) of this section not to apply to any factory or class of factories (the factory or class being described in the notification) in which the work performed—
 - (i) necessitates continuous production for technical reasons, or
 - (ii) supplies the public with articles of prime necessity which must be made every day, or
 - (iii) by its nature cannot be carried on except at stated seasons or at times dependent on the irregular action of natural forces ; and
- (d) the Governor General in Council may from time to time, by notification in the Gazette of India, declare sub-section (1) of this section not to apply to factories of any class described in the notification.

Women.

Employment
of women.

¹ 6. (1) No woman shall be employed before five o'clock in the morning or

¹ See sixth footnote on preceding page.

² (1) The provisions of sub-section (1) have been declared not to apply to the Bombay Gas Factory, see notification at page 256 of the Bombay List of Local Rules and Orders, Vol. I, Ed. 1896 ; (2) for notifications issued under this power for Lower Burma, see Burma Laws List, Ed. 1897, p. 136 ; (3) Madras, see Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 162, and (4) for the North Western Provinces and Oudh, see the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 90 and 91.

(Children. Secs. 7-9. Women and Children. Sec. 10.)

after eight o'clock in the evening in any factory in which a system of employment in shifts or sets approved by the local Inspector is not in force.

(2) No woman shall be actually employed in any factory in any one day for more than eleven hours.

(3) Every woman shall be allowed an interval or intervals of rest amounting in the aggregate to at least an hour-and-a-half in the day when she is actually employed for eleven hours and to a proportionately less time when she is actually employed for less than eleven hours.

(4) The Governor General in Council may from time to time, by notification in the Gazette of India, declare all or any of the foregoing sub-sections of this section not to apply to factories of any class described in the notification or to women employed in any process so described.

Children.

¹ 7. (1) No child shall be employed in any factory if he is under the age of nine years. Employment of children.

(2) No child shall be employed in any factory before five o'clock in the morning or after eight o'clock in the evening.

(3) No child shall be actually employed in any factory for more than seven hours in any one day.

(4) Every child who is actually employed in any factory for six hours in any one day shall be allowed an interval or intervals of rest amounting in the aggregate to at least half-an-hour.

¹ 8. No occupier of a factory shall allow any child to clean any part of the mill-gearing or machinery of such factory while the same is in motion, or to work between the fixed and traversing parts of any self-acting machine while such machine is in motion by the action of the steam-engine, water-wheel or other mechanical power, as the case may be. Prohibition of employment of child in certain dangerous work.

¹ 9. The Local Government may direct any occupier of a factory to keep,² in such form and with such particulars as such Government may from time to time prescribe, registers of the children (if any) employed in such factory, and of their respective employments. Register of children in a factory.

Women and Children.

¹ 10. (1) The occupier shall set up and maintain, in some conspicuous place in the factory, a printed or written notice, in English and the languages of the Provisions

¹ See sixth footnote on p 383, *supra*.

² For notification issued under this power, for Lower Burma, see Burma Rules Manual, Ed. 1897, p. 155. See also note to s. 18, *infra*, as to Bombay.

(*Women and Children. Sec. 11. Fencing. Sec. 12. Notices. Sec. 13.*)

supplement-
ary to sec-
tions 6 and 7.

district in which the factory is situated, showing the times at which such intervals as are required by section 6, sub-section (3), and section 7, sub-section (4), to be allowed to women and children, respectively, shall be allowed, and the length of each interval.

(2) A woman or child shall not be deemed to be actually employed within the meaning of section 6 or section 7 during any such interval as aforesaid.

Prohibition
of employ-
ment of
woman or
child in two
factories on
same day.
Fencing.

¹ 11. No occupier of a factory shall employ therein on any day any woman or child who has to his knowledge already been employed on the same day in any other factory.

Fencing.

12. (a) Every fly-wheel directly connected with a steam-engine, * ² water-wheel or other mechanical power in any part of a factory, and every part of a steam-engine or water-wheel,

(b) every hoist or teagle near which any person is liable to pass or be employed, and

(c) every other part of the machinery or mill-gearing of a factory which may, in the opinion of the local Inspector, be dangerous if left unfenced, and which he may have ordered to be fenced,

shall, while the same is in motion, be kept by the occupier of such factory securely fenced.

Any order under clause (3) may be set aside, on appeal or otherwise, by the Local Government or such authority as it may appoint in this behalf.³

Notices.

Notice to be
given of
accidents.

⁴ 13. When any accident occurs in a factory causing death or bodily injury whereby the person injured is prevented from returning to his work in the factory during forty-eight hours ⁵ [next] after the occurrence of the accident, the occupier of such factory, or, in his absence, his principal agent in the management of such factory, shall send such notice of ⁶ [the accident] to such authorities in such form and within such time as the Local Government may from time to time by rule direct.⁷

¹ See sixth footnote on p. 383, *supra*.

² The word "or" was repealed by the Indian Factories Act, 1891 (XI of 1891), s. 11.

³ For notification issued under this power in Burma, see Burma Rules Manual, Ed. 1897, p. 157.

⁴ Cf. the Factories Act, 1844 (7 & 8 Vict., c. 15), s. 22, repealed before Act XV of 1881 was passed by the Factories and Workshops Act, 1878 (41 & 42 Vict., c. 16).

⁵ The word "next" was inserted by the Indian Factories Act, 1891 (XI of 1891), s. 12.

⁶ These words were substituted for the words "such accident" by the Indian Factories Act, 1891 (XI of 1891), s. 12.

⁷ For notification issued under this power in Burma, see Burma Rules Manual, Ed. 1897, p. 157. See also note to s. 18, *infra*, as to Bombay.

(Notices. Sec. 14. Penalties. Sec. 15.)

¹ 14. Every person shall, within one month after he begins to occupy a factory, send to the local Inspector a written notice containing the name of the factory ²[and of] the place where it is situate, the address to which he desires his letters to be addressed, the nature of the work performed in such factory, the nature and amount of the moving power therein, and the name of the person * * ³ under whom the business of the factory is to be carried on.

Person beginning to occupy factory to give notice.

Penalties.

⁴ 15. (1) Any person who, in breach of this Act or of any order or rule made thereunder,—

Penalties.

- (a) employs any person in any factory ;
- (b) allows any child to perform the work forbidden by, or to work in contravention of, section 8 ;
- (c) neglects to keep a register in manner prescribed under section 9 ;
- (d) neglects to set up or maintain the notice required by section 10, sub-section (1) ;
- ⁵ (e) neglects to fence any machinery or mill-gearing in any factory ;
- (f) neglects to maintain a supply of water for the use of persons employed in any factory ;
- (g) neglects to ventilate any factory or to keep any factory in a cleanly state and free from effluvia arising from any drain, privy or other nuisance ;
- (h) suffers any factory to be so overcrowded, while work is carried on therein, as to be injurious to the health of the persons employed therein ; or
- (i) neglects to send any notice or furnish any return,

shall be punished with fine which may extend to two hundred rupees :

Provided that—

- (i) no prosecution under this sub-section shall be instituted except by, or with the previous sanction of, the local Inspector ; and
- (ii) no person shall be liable under this sub-section to more than one penalty for any one description of offence committed on the same day except where two or more persons are employed contrary to the

¹ Cf. the Factories and Workshops Act, 1878 (41 & 42 Vict., c. 16), s. 75.

² These words were inserted by the Indian Factories Act, 1891 (XI of 1891), s. 13 (1).

³ The words " if any " were repealed by the Indian Factories Act, 1891 (XI of 1891), s. 13 (2).

⁴ This section was substituted for the original s. 15 by the Indian Factories Act, 1891 (XI of 1891), s. 14.

⁵ Cf. the Factories Act, 1844 (7 & 8 Vict., c. 15), s. 43 ; and the Factories Act, 1856 (19 & 20 Vict., c. 38), s. 6, both repealed before Act XV of 1881 was passed by the Factories and Workshops Act, 1878 (41 & 42 Vict., c. 16).

(Penalties. Secs. 16-17. Miscellaneous. Sec. 18.)

provisions of this Act, in which case one penalty may be imposed in respect of each person so employed.

(2) Any person who corruptly uses or attempts to use, as a certificate granted to himself under section 5, a certificate granted to another person under that section, or who, having procured a certificate under the said section, corruptly allows it to be used, or an attempt to use it to be made, by another person, shall be punished with fine which may extend to twenty rupees.

Burden of proof as to age.

¹ 16. Where an act or omission would, if a person were under ²[nine] or ³[fourteen] years of age, be an offence punishable under this Act, and such person is, in the opinion of the Court, apparently under such age, it shall lie on the accused to prove that such person is not under such age.

Certifying Surgeon's declaration in writing.

A declaration in writing by a certifying surgeon that he has personally examined a person employed in a factory and believes him to be under or over the age set forth in such declaration shall, for the purposes of this Act, be admissible as evidence of the age of that person.

Occupier primarily liable for breaches of Act or orders or rules thereunder.

⁴ 17. Every occupier of a factory shall be deemed primarily liable for any breach therein of this Act or of any order or rule made thereunder; but he may discharge himself from such liability by proof that such breach was committed by some other person without his knowledge or consent, and in that case the person committing such breach shall be liable therefor.

Miscellaneous.

Power to make rules.

⁵ 18. (1) Subject to the control of the Governor General in Council, the Local Government may from time to time make rules consistent with this Act to provide for ⁶—

(a) the fencing of machinery and mill-gearing in factories;

¹ Cf. the Factories Act, 1856 (19 & 20 Vict., c. 15), s. 53; and the Factories Act, 1878 (41 & 42 Vict., c. 16), s. 92.

² The word "nine" was substituted for the word "seven" by the Indian Factories Act, 1891 (XI of 1891), s. 9.

³ The word "fourteen" was substituted for the word "twelve" by the Indian Factories Act, 1891 (XI of 1891), s. 5.

⁴ This section was substituted for the original s. 17 by the Indian Factories Act, 1891 (XI of 1891), s. 15.

⁵ This section was substituted for the original s. 18 by the Indian Factories Act, 1891 (XI of 1891), s. 16 (1).

⁶ For rules made for—

(1) Assam, see the Assam Manual of Local Rules and Orders, Ed. 1893, p. 423;

(2) Lower Burma, see Burma Rules Manual, Ed. 1897, pp. 157, 158 and 160, and Burma Laws List, Ed. 1897, pp. 136 and 137;

(3) for Bombay (under this and ss. 9 and 18), see Bombay List of Local Rules and Orders, Vol. I, Ed. 1886, pp. 256, 260 and 262;

(4) Central Provinces, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 97;

(5) Madras, see the Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 163; and

(6) North-Western Provinces and Oudh, see the North-Western Provinces and Oudh List of Local Rules and Orders, Ed. 1894, pp. 91 and 92.

(Miscellaneous. Secs. 19-20.)

- (b) the water-supply to be maintained for the use of persons employed in factories ;
- (c) the ventilation of factories and their cleanliness (including lime-washing, painting, varnishing and washing) and freedom from effluvia arising from any drain, privy or other nuisance ;
- (d) the prevention of such overcrowding of factories, while work is carried on therein, as is likely to be injurious to the health of the persons employed therein ;
- (e) the inspection of factories ;
- (f) the manner in which appeals under this Act are to be presented and heard ; and
- (g) otherwise carrying out the purposes of this Act.

(2) The Governor General in Council may from time to time make rules ¹ requiring occupiers of factories to furnish such returns, occasional or periodical, as may be necessary for the effectual carrying out of this Act.

(3) Such rules shall be published in the local official Gazette or the Gazette of India, as the case may be, and shall thereupon have the force of law.

(4) Before making rules under clause (b), clause (c) or clause (d) of sub-section (1) of this section, the Local Government, and before making rules under sub-section (2) of this section the Governor General in Council, shall publish, in such manner as may in its or his opinion be sufficient for giving information to persons interested, a draft of the proposed rules, with a notice specifying a date (not less remote than two months from the publication of the notice) at or after which the draft will be taken into consideration, and shall consider any objection or suggestion which may be received from any person with respect to the draft before the date so specified.

² 19. This Act shall apply to factories belonging to the Crown: Provided that, in case of any public emergency, the Governor General in Council or the Local Government may, by an order in writing, exempt any ³* factory from this Act to such extent and during such period as the Governor General in Council or the Local Government, as the case may be, thinks fit.

Crown factories.

⁴ 20. (1) Notwithstanding anything in clause (b) of the definition of the word "factory" in section 2, the Local Government may from time to time, by notification in the official Gazette, declare any premises, or premises of any

Power to Local Government to extend definition of

¹ For rules made by the Governor General in Council under this section, see Gazette of India, 1892, Pt. I, p. 155.

² Cf. the Factories Act, 1878 (41 & 42 Vict., c. 16), s. 93.

³ The word "such" was repealed by Act XI of 1891, s. 17.

⁴ S. 20 was added by the Indian Factories Act, 1891 (XI of 1891), s. 18.

"factory."

class, which fulfil the other conditions of the said definition, to be a factory for all the purposes of this Act,¹ or for such of those purposes as may be specified in the notification, if the number of persons simultaneously employed in the premises on any day in any manual labour in, or incidental to, any such process as is referred to in the said clause (b) is less than fifty and not less than twenty.

(2) The Local Government may,² by such notification, fix any number below fifty and not below twenty as the number of persons whose simultaneous employment as aforesaid is to be held to subject premises, as a factory, to all or any of the provisions of this Act and of the orders and rules made thereunder.

ACT No. XVI OF 1881.³

[15th March, 1881.]

An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.

Preamble.

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in British India, and to prevent the creation of such obstructions ; It is hereby enacted as follows :—

Short title.
Commence-
ment.

1. This Act may be called the Obstructions in Fairways Act, 1881 ; and it shall come into force at once.

But nothing herein contained shall apply to vessels belonging to Her Majesty or hired by Her Majesty or by the Secretary of State for India in Council.

Local Gov-
ernment em-
powered to
remove or
destroy
obstruction
in fairway.

2. Whenever, in any fairway leading to any port in British India, any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, the Local Government of the part of British India in which such port is situate may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,—

(a) cause such thing or any part thereof to be removed ; or

¹ For notification issued for Pombay under this sub-section, see Bombay List of Local Rules and Orders, Vol. 1, Ed. 1896, p. 264.

² For notification issued under this section in Burma, see Burma Rules Manual, Ed. 1897, p. 163.

³ For the Statement of Objects and Reasons, see Gazette of India, 1881, Pt. V, p. 3 ; for Proceedings in Council, see *ibid.*, 1881, Supplement, pp. 19 and 405.

(Secs. 3-7.)

(b) if such thing is of such a description or so situate that, in the opinion of the Local Government, it is not worth removing, cause the same or any part thereof to be destroyed.

3. Whenever anything is removed under section 2, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

Government entitled to expenses incurred in removing obstruction.

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the District Magistrate¹ or Presidency Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Dispute concerning such expenses.

4. The Local Government shall, whenever anything is removed under section 2, publish in the local official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Notice of removal to be given by Local Government.

5. If, after publishing such notification, such thing is unclaimed, or if the person claiming the same fails to pay the amount due for the said expenses and any customs-duties or other charges properly incurred by the Local Government in respect thereof,

Things removed may, in certain cases, be sold.

the Local Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same :

Proceeds how applied.

Provided that he makes the claim within one year from the date of the sale.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel ; and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

"Vessel" to include tackle, cargo, etc.

¹ See s. 3 of the Code of Criminal Procedure, 1898 (Act V of 1898).

(Secs. 8-12.)

Power to
make rules
to regulate
and prohibit
the placing
of obstruc-
tions in
fairways.

8. The Governor General in Council may, from time to time, by notification in the Gazette of India, make rules to regulate or prohibit, in any fairway leading to a port in British India, the placing of fishing-stakes, the casting or throwing of ballast, rubbish or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will, in his opinion, cause, or be likely to cause, obstruction or danger to navigation.

Penalty for
breach of
such rules.

9. Whoever is guilty of any act or omission in contravention of the rules made under section 8 may be tried for such offence in any district or presidency-town in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Compensa-
tion payable
in certain
cases for
damage
caused under
this Act.

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 8, any person having a right to maintain or create such obstruction shall be entitled to receive from the Secretary of State for India in Council reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes¹ and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the presidency-town or district in which the port to which such fairway leads is situate.

Certain
action of the
Government
previous
to passing
of this Act to
be deemed to
have been
taken here-
under.

11. Whenever any obstruction in a fairway leading to a port in British India has been removed or destroyed, or whenever the creation of any such obstruction has been regulated or prohibited, by an order of the Governor General in Council or a Local Government, previous to the passing of this Act, such removal, destruction, regulation or prohibition shall be deemed to have been effected under this Act.

Saving of
other powers
possessed by
Government.

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

¹ See the Land Acquisition Act, 1894 (I of 1894).

THE NEGOTIABLE INSTRUMENTS ACT, 1881.

CONTENTS.

CHAPTER I.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Saving of usages relating to hundis, etc.
Commencement.
 2. [*Repealed.*]
 3. Interpretation-clause.
-

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

4. "Promissory note."
5. "Bill of exchange."
6. "Cheque."
7. "Drawer."
8. "Drawee."
"Drawee in case of need."
"Acceptor."
"Acceptor for honour."
"Payee."
9. "Holder."
10. "Holder in due course."
11. "Payment in due course."
12. "Inland instrument."
13. "Foreign instrument."
14. "Negotiable instrument."
15. "Negotiation."
16. "Indorsement."
17. "Indorsement 'in blank' and 'in full.'"
"Indorsee."
18. "Ambiguous instruments."
19. "Where amount is stated differently in figures and words."
20. "Instruments payable on demand."

SECTIONS.

20. Inchoate stamped instruments.
21. "At sight."
"On presentment."
"After sight."
22. "Maturity."
Days of grace.
23. Calculating maturity of bill or note payable so many months after date or sight.
24. Calculating maturity of bill or note payable so many days after date or sight.
25. When day of maturity is a holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

26. Capacity to make, etc., promissory notes, etc.
Minor.
27. Agency.
28. Liability of agent signing.
29. Liability of legal representative signing.
30. Liability of drawer.
31. Liability of drawee of cheque.
32. Liability of maker of note and acceptor of bill.
33. Only drawee can be acceptor except in need or for honour.
34. Acceptance by several drawees not partners.
35. Liability of indorser.
36. Liability of prior parties to holder in due course.
37. Maker, drawer and acceptor principals.
38. Prior party a principal in respect of each subsequent party.
39. Suretyship.
40. Discharge of indorser's liability.
41. Acceptor bound, although indorsement forged.
42. Acceptance of bill drawn in fictitious name.
43. Negotiable instrument made, etc., without consideration.
44. Partial absence or failure of money-consideration.
45. Partial failure of consideration not consisting of money.
- 45A. Holder's right to duplicate of lost bill.

CHAPTER IV.

OF NEGOTIATION.

46. Delivery.
47. Negotiation by delivery.
48. Negotiation by indorsement.
49. Conversion of indorsement in blank into indorsement in full.
50. Effect of indorsement.

SECTIONS.

51. Who may negotiate.
52. Indorser who excludes his own liability or makes it conditional.
53. Holder deriving title from holder in due course.
54. Instrument indorsed in blank.
55. Conversion of indorsement in blank into indorsement in full.
56. Indorsement for part of sum due.
57. Legal representative cannot by delivery only negotiate instrument indorsed by deceased.
58. Instrument obtained by unlawful means or for unlawful consideration.
59. Instrument acquired after dishonour or when overdue.
Accommodation note or bill.
60. Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. Presentment for acceptance.
62. Presentment of promissory note for sight.
63. Drawee's time for deliberation.
64. Presentment for payment.
65. Hours for presentment.
66. Presentment for payment of instrument payable after date or sight.
67. Presentment for payment of promissory note payable by instalments.
68. Presentment for payment of instrument payable at specified place and not elsewhere.
69. Instrument payable at specified place.
70. Presentment where no exclusive place specified.
71. Presentment when maker, etc., has no known place of business or residence.
72. Presentment of cheque to charge drawer.
73. Presentment of cheque to charge any other person.
74. Presentment of instrument payable on demand.
75. Presentment by or to agent, representative of deceased, or assignee of insolvent.
76. When presentment unnecessary.
77. Liability of banker for negligently dealing with bill presented for payment.

CHAPTER VI.

OF PAYMENT AND INTEREST.

78. To whom payment should be made.
79. Interest when rate specified.
80. Interest when no rate specified.
81. Delivery of instrument on payment, or indemnity in case of loss.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

SECTIONS.

- 82. Discharge from liability—
 - (a) by cancellation ;
 - (b) by release ;
 - (c) by payment.
 - 83. Discharge by allowing drawee more than twenty-four hours to accept.
 - 84. When cheque not duly presented and drawer damaged thereby.
 - 85. Cheque payable to order.
 - 86. Parties not consenting discharged by qualified or limited acceptance.
 - 87. Effect of material alteration.
Alteration by indorsee.
 - 88. Acceptor of indorser bound notwithstanding previous alteration.
 - 89. Payment of instrument on which alteration is not apparent.
 - 90. Extinguishment of rights of action on bill in acceptor's hands.
-

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

- 91. Dishonour by non-acceptance.
 - 92. Dishonour by non-payment.
 - 93. By and to whom notice should be given.
 - 94. Mode in which notice may be given.
 - 95. Party receiving must transmit notice of dishonour.
 - 96. Agent for presentment.
 - 97. When party to whom notice given is dead.
 - 98. When notice of dishonour is unnecessary.
-

CHAPTER IX.

OF NOTING AND PROTEST.

- 99. Noting.
 - 100. Protest.
Protest for better security.
 - 101. Contents of protest.
 - 102. Notice of protest.
 - 103. Protest for non-payment after dishonour by non-acceptance.
 - 104. Protest of foreign bills.
 - 104A. When noting equivalent to protest.
-

CHAPTER X.

OF REASONABLE TIME.

- 105. Reasonable time.
- 106. Reasonable time of giving notice of dishonour.
- 107. Reasonable time for transmitting such notice.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

SECTIONS.

- 108. Acceptance for honour.
 - 109. How acceptance for honour must be made.
 - 110. Acceptance not specifying for whose honour it is made.
 - 111. Liability of acceptor for honour.
 - 112. When acceptor for honour may be charged.
 - 113. Payment for honour.
 - 114. Right of payer for honour.
 - 115. Drawee in case of need.
 - 116. Acceptance and payment without protest.
-

CHAPTER XII.

OF COMPENSATION.

- 117. Rules as to compensation.
-

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

- 118. Presumptions as to negotiable instruments—
 - (a) of consideration;
 - (b) as to date;
 - (c) as to time of acceptance;
 - (d) as to time of transfer;
 - (e) as to order of indorsements;
 - (f) as to stamp;
 - (g) that holder is a holder in due course.
 - 119. Presumption on proof of protest.
 - 120. Estoppel against denying original validity of instrument.
 - 121. Estoppel against denying capacity of payee to indorse.
 - 122. Estoppel against denying signature or capacity of prior party.
-

CHAPTER XIV.

OF CROSSED CHEQUES.

- 123. Cheque crossed generally.
- 124. Cheque crossed specially.
- 125. Crossing after issue.

SECTIONS.

- 126. Payment of cheque crossed generally.
Payment of cheque crossed specially.
- 127. Payment of cheque crossed specially more than once.
- 128. Payment in due course of crossed cheque.
- 129. Payment of crossed cheque out of due course.
- 130. Cheque bearing "not negotiable."
- 131. Non-liability of banker receiving payment of cheque.

CHAPTER XV.

OF BILLS IN SETS.

- 132. Set of bills.
- 133. Holder of first acquired part entitled to all.

CHAPTER XVI.

OF INTERNATIONAL LAW.

- 134. Law governing liability of maker, acceptor or indorser of foreign instrument.
- 135. Law of place of payment governs dishonour.
- 136. Instrument made, etc., out of British India, but in accordance with its law.
- 137. Presumption as to foreign law.

CHAPTER XVII.

NOTARIES PUBLIC.

- 138. Power to appoint notaries public.
- 139. Power to make rules for notaries public.

SCHEDULE.

[*Repealed.*]

ACT No. XXVI of 1881.¹

[9th December, 1881.]

**An Act to define and amend the law relating to Promissory
Notes, Bills of Exchange and Cheques.**

WHEREAS it is expedient to define and amend the law relating to promissory notes, bills of exchange and cheques; It is hereby enacted as follows :— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Negotiable Instruments Act, 1881.

Short title.

III of 1871. It extends to the whole of British India; but nothing herein contained affects the Indian Paper Currency Act, 1871, section 21,² or affects any local usage relating to any instrument in an Oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall be governed by this Act; and it shall come into force on the first day of March, 1882.

Local extent.
Saving of
usages relat-
ing to hun-
dis, etc.

Commence-
ment.

2. [Repeal of enactments.] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

3. In this Act—

Interpreta-
tion-clause.

“banker” includes also persons or a corporation or company acting as bankers: and

“Banker.”

“notary public” includes also any person appointed by the Governor General in Council to perform the functions of a notary public under this Act.

“Notary pub-
lic.”

¹ For Statement of Objects and Reasons, see Gazette of India, 1876, p. 1336; for the Reports of the Select Committee, see *ibid.*, 1877, Pt. V, p. 321; 1878, Pt. V, p. 145; 1879, Pt. V, p. 75; 1881, Pt. V, p. 85; for discussions in Council, see *ibid.*, 1876, Supplement, p. 1081; and *ibid.*, 1881, Supplement, p. 1409.

This Act has been declared in force in the Town of Mandalay, see the Upper Burma Laws Act, 1886 (XX of 1886), s. 6, and Second Schedule, Second Part, printed, Burma Code, Ed. 1889, p. 363. It has also been extended, under s. 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed, General Acts, Vol. II, Ed. 1898, p. 467, to the whole of Upper Burma, see Burma Gazette, 1893, Pt. I, p. 154.

For summary procedure on negotiable instruments, see the Code of Civil Procedure (Act XIV of 1882), Ch. XXXIX, printed, General Acts, Vol. IV.

² See now the Indian Paper Currency Act, 1882 (XX of 1882), s. 25, printed, General Acts, Vol. IV.

CHAPTER II.

OF NOTES, BILLS AND CHEQUES.

“Promissory
note.”

4. A “promissory note” is an instrument in writing (not being a bank note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.

Illustrations.

A signs instruments in the following terms ;

(a) “I promise to pay B or order Rs. 500.”

(b) “I acknowledge myself to be indebted to B in Rs. 1,000, to be paid on demand, for value received.”

(c) “Mr. B, I O U Rs. 1,000.”

(d) “I promise to pay B Rs. 500 and all other sums which shall be due to him.”

(e) “I promise to pay B Rs. 500, first deducting thereout any money which he may owe me.”

(f) “I promise to pay B Rs. 500 seven days after my marriage with C.”

(g) “I promise to pay B Rs. 500 on D’s death, provided D leaves me enough to pay that sum.”

(h) “I promise to pay B Rs. 500 and to deliver to him my black horse on 1st January next.”

The instruments respectively marked (a) and (b) are promissory notes. The instruments respectively marked (c), (d), (e), (f), (g) and (h) are not promissory notes.

“Bill of ex-
change.”

5. A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A promise or order to pay is not “conditional,” within the meaning of this section and section 4, by reason of the time for payment of the amount or any instalment thereof being expressed to be on the lapse of a certain period after the occurrence of a specified event which, according to the ordinary expectation of mankind, is certain to happen, although the time of its happening may be uncertain.

The sum payable may be “certain,” within the meaning of this section and section 4, although it includes future interest or is payable at an indicated rate of exchange, or is according to the course of exchange, and although the instrument provides that, on default of payment of an instalment, the balance unpaid shall become due.

The person to whom it is clear that the direction is given or that payment is to be made may be a “certain person,” within the meaning of this section and section 4, although he is mis-named or designated by description only.

6. A "cheque" is a bill of exchange drawn on a specified banker and not "Cheque." expressed to be payable otherwise than on demand.

7. The maker of a bill of exchange or cheque is called the "drawer;" the "Drawer." person thereby directed to pay is called "the drawee." "Drawee."

When in the bill or in any indorsement thereon the name of any person is given in addition to the drawee to be resorted to in any case of need, such person is called a "drawee in case of need." "Drawee in case of need."

After the drawee of a bill has signed his assent upon the bill, or, if there are more parts thereof than one, upon one of such parts, and delivered the same or given notice of such signing to the holder or to some person on his behalf he is called the "acceptor." "Acceptor."

¹[When a bill of exchange has been noted or protested for non-acceptance or for better security,] and any person accepts it *supra protest* for honour of the drawer or of any one of the indorsers, such person is called an "acceptor for honour." "Acceptor for honour."

The person named in the instrument, to whom or to whose order the money is by the instrument directed to be paid, is called the "payee." "Payee."

8. The "holder" of a promissory note, bill of exchange or cheque means "Holder." any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto.

Where the note, bill or cheque is lost or destroyed, its holder is the person so entitled at the time of such loss or destruction.

9. "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, "Holder in due course."

or the payee or indorsee thereof, if payable to, or to the order of, a payee, before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

10. "Payment in due course" means payment in accordance with the "Payment in due course." apparent tenor of the instrument in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

11. A promissory note, bill of exchange or cheque drawn or made in Inland instrument.

¹ These words were substituted for the words "When acceptance is refused and the bill is protested for non-acceptance," by the Negotiable Instruments Act, 1885 (II of 1885), s. 2, printed, General Acts, Vol. V.

(Chapter II.—Of Notes, Bills and Cheques. Secs. 12-20.)

British India, and made payable in, or drawn upon any person resident in, British India, shall be deemed to be an inland instrument.

Foreign instrument.

12. Any such instrument not so drawn, made or made payable shall be deemed to be a foreign instrument.

"Negotiable instrument."

13. A "negotiable instrument" means a promissory note, bill of exchange or cheque expressed to be payable to a specified person, or his order, or to the order of a specified person, or to the bearer thereof, or to a specified person or the bearer thereof.

Negotiation.

14. When a promissory note, bill of exchange or cheque is transferred to any person, so as to constitute that person the holder thereof, the instrument is said to be negotiated.

Indorsement.

15. ¹ When the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same, and is called the "indorser."

Indorsement "in blank" and "in full."

16. If the indorser signs his name only, the indorsement is said to be "in blank," and if he adds a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person, the indorsement is said to be "in full," and the person so specified is called the "indorsee" of the instrument.

Ambiguous instruments.

17. Where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either, and the instrument shall be thenceforward treated accordingly.

Where amount is stated differently in figures and words.

18. If the amount undertaken or ordered to be paid is stated differently in figures and in words, the amount stated in words shall be the amount undertaken or ordered to be paid.

Instruments payable on demand

19. A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.

Inchoate stamped instruments.

20. Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in British India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives *prima facie* authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered

¹ For an exception to s. 15 in the case of Government securities, see the Indian Securities Act, 1886 (XIII of 1886), s. 6, printed, General Acts, Vol. V.

(Chapter III.—Of Notes, Bills and Cheques. Secs. 21-25.)

by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: Provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

21. In a promissory note or bill of exchange the expressions "at sight" and "on presentment" mean on demand. The expression "after sight" means, in a promissory note, after presentment for sight, and, in a bill of exchange, after acceptance, or noting for non-acceptance, or protest for non-acceptance.

"At sight."
"On presentment."
"After sight."

22. The maturity of a promissory note or bill of exchange is the date at which it falls due.

"Maturity."

Every promissory note or bill of exchange which is not expressed to be payable on demand, at sight or on presentment is at maturity on the third day after the day on which it is expressed to be payable.

Days of grace.

23. In calculating the date at which a promissory note or bill of exchange, made payable a stated number of months after date or after sight, or after a certain event, is at maturity, the period stated shall be held to terminate on the day of the month which corresponds with the day on which the instrument is dated, or presented for acceptance or sight, or noted for non-acceptance or protested for non-acceptance, or the event happens, or, where the instrument is a bill of exchange made payable a stated number of months after sight and has been accepted for honour, with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month.

Calculating maturity of bill or note payable so many months after date or sight.

Illustrations.

(a) A negotiable instrument, dated 29th January, 1878, is made payable at one month after date. The instrument is at maturity on the third day after the 28th February, 1878.

(b) A negotiable instrument, dated 30th August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

(c) A promissory note or bill of exchange, dated 31st August, 1878, is made payable three months after date. The instrument is at maturity on the 3rd December, 1878.

24. In calculating the date at which a promissory note or bill of exchange made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or of presentment for acceptance or sight, or of protest for non-acceptance, or on which the event happens, shall be excluded.

Calculating maturity of bill or note payable so many days after date or sight.

25. When the day on which a promissory note or bill of exchange is at

When day of

(Chapter III.—Parties to Notes, Bills and Cheques. Secs. 26-30.)

maturity is a holiday.

maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day.

Explanation.—The expression “public holiday” includes Sundays, New Year’s day, Christmas day : if either of such days falls on a Sunday, the next following Monday : Good Friday ; and any other day declared by the Local Government, by notification in the Official Gazette, to be a public holiday.

CHAPTER III.

PARTIES TO NOTES, BILLS AND CHEQUES.

Capacity to make, etc., promissory notes, etc.

26. Every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, indorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

Minor.

A minor may draw, indorse, deliver and negotiate such instrument so as to bind all parties except himself.

Nothing herein contained shall be deemed to empower a corporation to make, indorse or accept such instruments except in cases in which, under the law for the time being in force, they are so empowered.

Agency.

27. Every person capable of binding himself or of being bound, as mentioned in section 26, may so bind himself or be bound by a duly authorized agent acting in his name.

A general authority to transact business and to receive and discharge debts does not confer upon an agent the power of accepting or indorsing bills of exchange so as to bind his principal.

An authority to draw bills of exchange does not of itself import an authority to indorse.

Liability of agent signing.

28. An agent who signs his name to a promissory note, bill of exchange or cheque without indicating thereon that he signs as agent, or that he does not intend thereby to incur personal responsibility, is liable personally on the instrument, except to those who induced him to sign upon the belief that the principal only would be held liable.

Liability of legal representative signing.

29. A legal representative of a deceased person who signs his name to a promissory note, bill of exchange or cheque is liable personally thereon unless he expressly limits his liability to the extent of the assets received by him as such.

Liability of drawer.

30. The drawer of a bill of exchange or cheque is bound, in case of dishonour by the drawee or acceptor thereof, to compensate the holder, provided due notice of dishonour has been given to, or received by, the drawer as hereinafter provided.

(Chapter III.—Parties to Notes, Bills and Cheques. Secs. 31-38.)

31. The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default.

Liability of drawee of cheque.

32. In the absence of a contract to the contrary, the maker of a promissory note and the acceptor before maturity of a bill of exchange are bound to pay the amount thereof at maturity according to the apparent tenor of the note or acceptance respectively, and the acceptor of a bill of exchange at or after maturity is bound to pay the amount thereof to the holder on demand.

Liability of maker of note and acceptor of bill.

In default of such payment as aforesaid, such maker or acceptor is bound to compensate any party to the note or bill for any loss or damage sustained by him and caused by such default.

33. No person except the drawee of a bill of exchange, or all or some of several drawees, or a person named therein as a drawee in case of need, or an acceptor for honour, can bind himself by an acceptance.

Only drawee can be acceptor except in case of need or for honour.

34. Where there are several drawees of a bill of exchange who are not partners, each of them can accept it for himself, but none of them can accept it for another without his authority.

Acceptance by several drawees not partners.

35. In the absence of a contract to the contrary, whoever indorses and delivers a negotiable instrument before maturity, without, in such indorsement, expressly excluding or making conditional his own liability, is bound thereby to every subsequent holder in case of dishonour by the drawee, acceptor or maker to compensate such holder for any loss or damage caused to him by such dishonour, provided due notice of dishonour has been given to, or received by, such indorser as hereinafter provided.

Liability of indorser.

Every indorser after dishonour is liable as upon an instrument payable on demand.

36. Every prior party to a negotiable instrument is liable thereon to a holder in due course until the instrument is duly satisfied.

Liability of prior parties to holder in due course.

37. The maker of a promissory note or cheque, the drawer of a bill of exchange until acceptance, and the acceptor are, in the absence of a contract to the contrary, respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, drawer or acceptor, as the case may be.

Maker, drawer and acceptor principals.

38. As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, also liable thereon as a principal debtor in respect of each subsequent party.

Prior party a principal in respect of each subsequent party.

*(Chapter III.—Parties to Notes, Bills and Cheques. Secs. 39-43.)**Illustration.*

A draws a bill payable to his own order on B, who accepts. A afterwards indorses the bill to C, C to D, and D to E. As between E and B, B is the principal debtor, and A, C and D are his sureties. As between E and A, A is the principal debtor, and C and D are his sureties. As between E and C, C is the principal debtor and D is his surety.

Suretyship.

39. When the holder of an accepted bill of exchange enters into any contract with the acceptor which, under section 134 or 135 of the Indian Contract Act, 1872,¹ would discharge the other parties, the holder may expressly reserve his right to charge the other parties, and in such case they are not discharged. IX of 1872.

Discharge of indorser's liability.

40. Where the holder of a negotiable instrument, without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Illustration.

A is the holder of a bill of exchange made payable to the order of B, which contains the following indorsements in blank :—

First indorsement, " B."

Second indorsement, " Peter Williams."

Third indorsement, " Wright & Co."

Fourth indorsement, " John Rozario."

This bill A puts in suit against John Rozario and strikes out, without John Rozario's consent, the indorsements by Peter Williams and Wright & Co. A is not entitled to recover anything from John Rozario.

Acceptor bound although indorsement forged.

41. An acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knew or had reason to believe the indorsement to be forged when he accepted the bill.

Acceptance of bill drawn in fictitious name.

42. An acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an indorsement by the same hand as the drawer's signature, and purporting to be made by the drawer.

Negotiable instrument made, etc., without consideration.

43. A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without indorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

¹ Printed, General Acts, Vol. II, Ed. 1898, p. 299.

(Chapter III.—Parties to Notes, Bills and Cheques. Secs. 44-45A.)

Exception I.—No party for whose accommodation a negotiable instrument has been made, drawn, accepted or indorsed can, if he have paid the amount thereof, recover thereon such amount from any person who became a party to such instrument for his accommodation.

Exception II.—No party to the instrument who has induced any other party to make, draw, accept, indorse or transfer the same to him for a consideration which he has failed to pay or perform in full shall recover thereon an amount exceeding the value of the consideration (if any) which he has actually paid or performed.

44. When the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial
absence or
failure of
money-con-
sideration.

Explanation.—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

Illustration.

A draws a bill on B for Rs. 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to Rs. 400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs. 400.

45. Where a part of the consideration for which a person signed a promissory note, bill of exchange or cheque, though not consisting of money, is ascertainable in money without collateral enquiry, and there has been a failure of that part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Partial
failure of
consideration
not consist-
ing of money.

¹[45A. Where a bill of exchange has been lost before it is over-due, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

Holder's
right to dup-
licate of lost
bill.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.]

¹ S. 45A was inserted by the Negotiable Instruments Act, 1885 (II of 1885), s. 3, printed, General Acts, Vol. V.

CHAPTER IV.

OF NEGOTIATION.

Delivery. 46. The making, acceptance or indorsement of a promissory note, bill of exchange or cheque is completed by delivery, actual or constructive.

As between parties standing in immediate relation, delivery to be effectual must be made by the party making, accepting or indorsing the instrument or by a person authorised by him in that behalf.

As between such parties and any holder of the instrument other than a holder in due course, it may be shown that the instrument was delivered conditionally or for a special purpose only, and not for the purpose of transferring absolutely the property therein.

A promissory note, bill of exchange or cheque payable to bearer is negotiable by the delivery thereof.

A promissory note, bill of exchange or cheque payable to order is negotiable by the holder by indorsement and delivery thereof.

Negotiation by delivery. 47. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof.

Exception.—A promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable (except in the hands of a holder for value without notice of the condition) unless such event happens.

Illustrations.

(a) A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

(b) A, the holder of a negotiable instrument payable to bearer, which is in the hands of A's banker, who is at the time the banker of B, directs the banker to transfer the instrument to B's credit in the banker's account with B. The banker does so, and accordingly now possesses the instrument as B's agent. The instrument has been negotiated, and B has become the holder of it.

Negotiation by indorsement. 48. Subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to the order of a specified person, or to a specified person or order, is negotiable by the holder by indorsement and delivery thereof.

Conversion of indorsement in blank into indorsement in full. 49. The holder of a negotiable instrument indorsed in blank may, without signing his own name, by writing above the indorser's signature a direction to pay to any other person as indorsee, convert the indorsement in blank into an indorsement in full; and the holder does not thereby incur the responsibility of an indorser.

(Chapter IV.—Of Negotiation. Secs. 50-52.)

50. The indorsement of a negotiable instrument followed by delivery transfers to the indorsee the property therein with the right of further negotiation; but the indorsement may, by express words, restrict or exclude such right, or may merely constitute the indorsee an agent to indorse the instrument, or to receive its contents for the indorser, or for some other specified person.

Effect of
indorsement.

Illustrations.

B signs the following indorsements on different negotiable instruments payable to bearer :—

- (a) " Pay the contents to C only."
- (b) " Pay C for my use."
- (c) " Pay C or order for the account of B."
- (d) " The within must be credited to C."

These indorsements exclude the right of further negotiation by C.

- (e) " Pay C."
- (f) " Pay C value in account with the Oriental Bank."
- (g) " Pay the contents to C, being part of the consideration in a certain deed of assignment executed by C to the indorser and others."

These indorsements do not exclude the right of further negotiation by C.

51. Every sole maker, drawer, payee or indorsee, or all of several joint makers, drawers, payees or indorsees, of a negotiable instrument may, if the negotiability of such instrument has not been restricted or excluded as mentioned in section 50, indorse and negotiate the same.

Who may
negotiate.

Explanation.—Nothing in this section enables a maker or drawer to indorse or negotiate an instrument, unless he is in lawful possession or is holder thereof, or enables a payee or indorsee to indorse or negotiate an instrument unless he is holder thereof.

Illustration.

A bill is drawn payable to A or order. A indorses it to B, the indorsement not containing the words " or order " or any equivalent words. B may negotiate the instrument.

52. The indorser of a negotiable instrument may, by express words in the indorsement, exclude his own liability thereon, or make such liability or the right of the indorsee to receive the amount due thereon depend upon the happening of a specified event, although such event may never happen.

Indorser who
excludes his
own liability
or makes it
conditional.

Where an indorser so excludes his liability and afterwards becomes the holder of the instrument, all intermediate indorsers are liable to him.

Illustrations.

- (a) The indorser of a negotiable instrument signs his name, adding the words—
" Without recourse."

Upon this indorsement he incurs no liability.

(Chapter IV.—Of Negotiation. Secs. 53-59.)

(b) A is the payee and holder of a negotiable instrument. Excluding personal liability by an indorsement "without recourse," he transfers the instrument to B, and B indorses it to C, who indorses it to A. A is not only reinstated in his former rights, but has the rights of an indorsee against B and C.

Holder deriving title from holder in due course.
Instrument indorsed in blank.

53. A holder of a negotiable instrument who derives title from a holder in due course has the rights thereon of that holder in due course.

54. Subject to the provisions hereinafter contained as to crossed cheques, a negotiable instrument indorsed in blank is payable to the bearer thereof even although originally payable to order.

Conversion of indorsement in blank into indorsement in full.

55. If a negotiable instrument, after having been indorsed in blank, is indorsed in full, the amount of it cannot be claimed from the indorser in full, except by the person to whom it has been indorsed in full, or by one who derives title through such person.

Indorsement for part of sum due.

56. No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument, but, where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance.

Legal representative cannot by delivery only negotiate instrument indorsed by deceased.

57. The legal representative of a deceased person cannot negotiate by delivery only a promissory note, bill of exchange or cheque payable to order and indorsed by the deceased but not delivered.

Instrument obtained by unlawful means or for unlawful consideration.

58. When a negotiable instrument has been lost or has been obtained from any maker, acceptor or holder thereof by means of an offence or fraud, or for an unlawful consideration, no possessor or indorsee who claims through the person who found or so obtained the instrument is entitled to receive the amount due thereon from such maker, acceptor or holder, or from any party, prior to such holder, unless such possessor or indorsee is, or some person through whom he claims was, a holder thereof in due course.

Instrument acquired after dishonour or when over-due.

59. The holder of a negotiable instrument, who has acquired it after dishonour, whether by non-acceptance or non-payment, with notice thereof, or after maturity, has only, as against the other parties, the rights thereon of his transferor :

Accommodation note or bill.

Provided that any person who, in good faith and for consideration, becomes the holder, after maturity, of a promissory note or bill of exchange made, drawn or accepted without consideration, for the purpose of enabling some party thereto to raise money thereon, may recover the amount of the note or bill from any prior party.

(Chapter IV.—Of Negotiation. Sec. 60. Chapter V.—Of Presentment.
Secs. 61-63.)

Illustration.

The acceptor of a bill of exchange, when he accepted it, deposited with the drawer certain goods as a collateral security for the payment of the bill, with power to the drawer to sell the goods and apply the proceeds in discharge of the bill if it were not paid at maturity. The bill not having been paid at maturity, the drawer sold the goods and retained the proceeds but indorsed the bill to A. A's title is subject to the same objection as the drawer's title.

60. A negotiable instrument may be negotiated (except by the maker, drawee or acceptor after maturity) until payment or satisfaction thereof by the maker, drawee or acceptor at or after maturity, but not after such payment or satisfaction.

Instrument negotiable till payment or satisfaction.

CHAPTER V.

OF PRESENTMENT.

61. A bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment for acceptance.

If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to the drawee at a particular place, it must be presented at that place; and, if at the due date for presentment he cannot, after reasonable search, be found there, the bill is dishonoured.

¹[Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

62. A promissory note, payable at a certain period after sight, must be presented to the maker thereof for sight (if he can, after reasonable search, be found) by a person entitled to demand payment, within a reasonable time after it is made and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default.

Presentment of promissory note for sight.

63. The holder must, if so required by the drawee of a bill of exchange presented to him for acceptance, allow the drawee twenty-four hours (exclusive of public holidays) to consider whether he will accept it.

Drawee's time for deliberation.

¹ This paragraph was added by the Negotiable Instruments Act, 1885 (II of 1885), s. 4, printed, General Acts, Vol. V.

(Chapter V.—Of Presentment. Secs. 64-72.)

Presentment
for payment.

64. Promissory notes, bills of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

¹ [Where authorised by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.]

Exception.—Where a promissory note is payable on demand and is not payable at a specified place, no presentment is necessary in order to charge the maker thereof.

Hours for
presentment.

65. Presentment for payment must be made during the usual hours of business, and, if at a banker's, within banking hours.

Presentment
for payment
of instrument
payable after
date or sight.

66. A promissory note or bill of exchange made payable at a specified period after date or sight thereof, must be presented for payment at maturity.

Presentment
for payment
of promissory
note payable
by instal-
ments.

67. A promissory note payable by instalments must be presented for payment on the third day after the date fixed for payment of each instalment; and non-payment of such presentment has the same effect as non-payment of a note at maturity.

Presentment
for payment
of instrument
payable at
specified
place and not
elsewhere.

68. A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place.

Instrument
payable at
specified
place.

69. A promissory note or bill of exchange, made, drawn or accepted payable at a specified place must, in order to charge the maker or drawer thereof, be presented for payment at that place.

Presentment
where no ex-
clusive place
specified.

70. A promissory note or bill of exchange not made payable as mentioned in sections 68 and 69, must be presented for payment at the place of business (if any), or at the usual residence, of the maker, drawee or acceptor thereof, as the case may be.

Presentment
when maker,
etc., has no
known place
of business
or residence.

71. If the maker, drawee or acceptor of a negotiable instrument has no known place of business or fixed residence, and no place is specified in the instrument for presentment for acceptance or payment, such presentment may be made to him in person wherever he can be found.

Presentment
of cheque
to charge
drawer.

72. ² [Subject to the provisions of section 84,] a cheque must, in order to charge the drawer, be presented at the bank upon which it is drawn before the

¹ This paragraph was added by the Negotiable Instruments Act, 1885 (II of 1885), s. 4, printed, General Acts, Vol. V.

² These words and figures were inserted by the Negotiable Instruments Act Amendment Act, 1897 (VI of 1897), s. 2.

relation between the drawer and his banker has been altered to the prejudice of the drawer.

73. A cheque must, in order to charge any person except the drawer, be presented within a reasonable time after delivery thereof by such person.

Presentment of cheque to charge any other person.

74. Subject to the provisions of section 31, a negotiable instrument payable on demand must be presented for payment within a reasonable time after it is received by the holder.

Presentment of instrument payable on demand.

75. Presentment for acceptance or payment may be made to the duly authorised agent of the drawee, maker or acceptor, as the case may be, or, where the drawee, maker or acceptor has died, to his legal representative, or where he has been declared an insolvent, to his assignee.

Presentment by or to agent representative of deceased or assignee of insolvent.

76. No presentment for payment is necessary, and the instrument is dishonoured at the due date for presentment, in any of the following cases :—

When presentment unnecessary.

(a) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or,

if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or,

if the instrument being payable at some other specified place, neither he nor any person authorised to pay it attends at such place during the usual business hours, or,

if the instrument not being payable at any specified place, he cannot after due search be found ;

(b) as against any party sought to be charged therewith, if he has engaged to pay notwithstanding non-presentment ;

(c) as against any party if, after maturity, with knowledge that the instrument has not been presented—

he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part,

or otherwise waives his right to take advantage of any default in presentment for payment,

(d) as against the drawer, if the drawer could not suffer damage from the want of such presentment.

77. When a bill of exchange accepted payable at a specified bank, has been duly presented there for payment and dishonoured, if the banker so negligently or improperly keeps, deals with or delivers back such bill as to cause loss to the holder, he must compensate the holder for such loss.

Liability of banker for negligently dealing with bill presented for payment.

(Chapter VI.—Of Payment and Interest. Secs. 78-81. Chapter VII.—Of Discharge from Liability on Notes, Bills and Cheques. Sec. 82.)

CHAPTER VI.

OF PAYMENT AND INTEREST.

To whom payment should be made.

78. Subject to the provisions of section 82, clause (c), payment of the amount due on a promissory note, bill of exchange or cheque must, in order to discharge the maker or acceptor, be made to the holder of the instrument.

Interest when rate specified.

79. When interest at a specified rate is expressly made payable on a promissory note or bill of exchange, interest shall be calculated at the rate specified, on the amount of the principal money due thereon, from the date of the instrument, until tender or realization of such amount, or until such date after the institution of a suit to recover such amount as the Court directs.

Interest when no rate specified.

80. When no rate of interest is specified in the instrument, interest on the amount due thereon shall, except in cases provided for by the Code of Civil Procedure, section 532,¹ be calculated at the rate of six per centum per annum from the date at which the same ought to have been paid by the party charged, until tender or realization of the amount due thereon, or until such date after the institution of a suit to recover such amount as the Court directs.

Explanation.—When the party charged is the indorser of an instrument dishonoured by non-payment, he is liable to pay interest only from the time that he receives notice of the dishonour.

Delivery of instrument on payment or indemnity in case of loss.

81. Any person liable to pay, and called upon by the holder thereof to pay, the amount due on a promissory note, bill of exchange or cheque is before payment entitled to have it shown, and is on payment entitled to have it delivered up, to him, or, if the instrument is lost or cannot be produced, to be indemnified against any further claim thereon against him.

CHAPTER VII.

OF DISCHARGE FROM LIABILITY ON NOTES, BILLS AND CHEQUES.

Discharge from liability—by cancellation;

82. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from liability thereon—

- (a) to a holder thereof who cancels such acceptor's or indorser's name with intent to discharge him, and to all parties claiming under such holder;

¹ Printed, General Acts, Vol. IV.

*(Chapter VII.—Of Discharge from Liability on Notes, Bills and Cheques.
Secs. 83-86.)*

- (b) to a holder thereof who otherwise discharges such maker, acceptor or indorser, and to all parties deriving title under such holder after notice of such discharge ; by release ;
- (c) to all parties thereto, if the instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon. by payment.

83. If the holder of a bill of exchange allows the drawee more than twenty-four hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder. Discharge by allowing drawee more than twenty-four hours to accept.

84.¹ (1) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or person on whose account it is drawn had the right, at the time when presentment ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than he would have been if such cheque had been paid. When cheque not duly presented and drawer damaged thereby.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of the cheque as to which such drawer or person is so discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge and entitled to recover the amount from him.

Illustrations.

(a) A draws a cheque for Rs. 1,000, and, when the cheque ought to be presented, has funds at the bank to meet it. The bank fails before the cheque is presented. The drawer is discharged, but the holder can prove against the bank for the amount of the cheque.

(b) A draws a cheque at Umballa on a bank in Calcutta. The bank fails before the cheque could be presented in ordinary course. A is not discharged, for he has not suffered actual damage through any delay in presenting the cheque.

85. Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course. Cheque payable to order.

86. If the holder of a bill of exchange acquiesces in a qualified acceptance, or one limited to part of the sum mentioned in the bill, or which substitutes Parties not consenting discharged

¹ This section was substituted for the original s. 84 by the Negotiable Instruments Act Amendment Act, 1897 (VI of 1897), s. 3.

The original section was as follows—"When the holder of a cheque fails to present it for payment within a reasonable time, and the drawer thereof sustains loss or damage from such failure, he is discharged from liability to the holder."

(Chapter VII.—Of Discharge from Liability on Notes, Bills and Cheques.
Secs. 87-89.)

by qualified
or limited
acceptance.

a different place or time for payment, or which, where the drawees are not partners, is not signed by all the drawees, all previous parties whose consent is not obtained to such acceptance are discharged as against the holder and those claiming under him, unless on notice given by the holder they assent to such acceptance.

Explanation.—An acceptance is qualified—

- (a) where it is conditional, declaring the payment to be dependent on the happening of an event therein stated ;
- (b) where it undertakes the payment of part only of the sum ordered to be paid ;
- (c) where, no place of payment being specified on the order, it undertakes the payment at a specified place, and not otherwise or elsewhere ; or where, a place of payment being specified in the order, it undertakes the payment at some other place and not otherwise or elsewhere ;
- (d) where it undertakes the payment at a time other than that at which under the order it would be legally due.

Effect of
material
alteration.

87. Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties ;

Alteration by
indorsee.

and any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

Acceptor or
indorser
bound not-
withstanding
previous
alteration.

88. An acceptor or indorser of a negotiable instrument is bound by his acceptance or indorsement notwithstanding any previous alteration of the instrument.

Payment of
instrument
on which
alteration is
not apparent.

89. Where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered,

or where a cheque is presented for payment which does not at the time of presentation appear to be crossed or to have had a crossing which has been obliterated,

payment thereof by a person or banker liable to pay, and paying the same according to the apparent tenor thereof at the time of payment and otherwise in due course, shall discharge such person or banker from all liability thereon ;

(Chapter VII.—Of Discharge from Liability on Notes, Bills and Cheques.

Sec. 90. Chapter VIII.—Of Notice of Dishonour. Secs. 91-94.)

and such payment shall not be questioned by reason of the instrument having been altered or the cheque crossed.

90. If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.

Extinguish-
ment of
rights of
action on
bill in
acceptor's
hands.

CHAPTER VIII.

OF NOTICE OF DISHONOUR.

91. A bill of exchange is said to be dishonoured by non-acceptance when the drawee, or one of several drawees not being partners, makes default in acceptance upon being duly required to accept the bill, or where presentment is excused and the bill is not accepted.

Dishonour by
non-accept-
ance.

Where the drawee is incompetent to contract, or the acceptance is qualified, the bill may be treated as dishonoured.

92. A promissory note, bill of exchange or cheque is said to be dishonoured by non-payment when the maker of the note, acceptor of the bill or drawee of the cheque makes default in payment upon being duly required to pay the same.

Dishonour by
non-pay-
ment.

93. When a promissory note, bill of exchange or cheque is dishonoured by non-acceptance or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been so dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

By and to
whom notice
should be
given.

Nothing in this section renders it necessary to give notice to the maker of the dishonoured promissory note or the drawee or acceptor of the dishonoured bill of exchange or cheque.

94. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or, where he has died, to his legal representative, or, where he has been declared an insolvent, to his assignee; may be oral or written; may, if written, be sent by post; and may be in any form; but it must inform the party to whom it is given, either in express terms or by reasonable intendment, that the instrument has been dishonoured, and in what way and that he will be held liable thereon; and it must be given within a reasonable time after dishonour, at the place of business or (in case such party has no place of business) at the residence of the party for whom it is intended.

Mode in
which notice
may be
given.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

(Chapter VIII.—Of Notice of Dishonour. Secs. 95-98. Chapter IX.—Of Noting and Protest. Secs. 99-100.)

Party receiving must transmit notice of dishonour.

95. Any party receiving notice of dishonour must, in order to render any prior party liable to himself, give notice of dishonour to such party within a reasonable time, unless such party otherwise receives due notice as provided by section 93.

Agent for presentment.

96. When the instrument is deposited with an agent for presentment, the agent is entitled to the same time to give notice to his principal as if he were the holder giving notice of dishonour, and the principal is entitled to a further like period to give notice of dishonour.

When party to whom notice given is dead.

97. When the party to whom notice of dishonour is despatched is dead, but the party despatching the notice is ignorant of his death, the notice is sufficient.

When notice of dishonour is unnecessary.

98. No notice of dishonour is necessary—

- (a) when it is dispensed with by the party entitled thereto ;
- (b) in order to charge the drawer when he has countermanded payment ;
- (c) when the party charged could not suffer damage for want of notice ;
- (d) when the party entitled to notice cannot after due search be found ; or the party bound to give notice is, for any other reason, unable without any fault of his own to give it ;
- (e) to charge the drawers when the acceptor is also a drawer ;
- (f) in the case of a promissory note which is not negotiable ;
- (g) when the party entitled to notice, knowing the facts, promises unconditionally to pay the amount due on the instrument.

CHAPTER IX.

OF NOTING AND PROTEST.

Noting.

99. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each.

Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason, if any, assigned for such dishonour, or, if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured, and the notary's charges.

Protest.

100. When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, within a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

Protest for better security.

101. A protest under section 100 must contain—

Contents of protest.

- (a) either the instrument itself, or a literal transcript of the instrument and of everything written or printed thereupon;
- (b) the name of the person for whom and against whom the instrument has been protested;
- (c) a statement that payment or acceptance, or better security, as the case may be, has been demanded of such person by the notary public; the terms of his answer, if any, or a statement that he gave no answer, or that he could not be found;
- (d) when the note or bill has been dishonoured, the place and time of dishonour, and, when better security has been refused, the place and time of refusal;
- (e) the subscription of the notary public making the protest;
- (f) in the event of an acceptance for honour or of a payment for honour the name of the person by whom, of the person for whom, and the manner in which, such acceptance or payment was offered and effected.

¹[A notary public may make the demand mentioned in clause (c) of this section either in person or by his clerk or, where authorized by agreement or usage, by registered letter.]

102. When a promissory note or bill of exchange is required by law to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions; but the notice may be given by the notary public who makes the protest.

Notice of protest.

103. All bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentment to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

Protest for non-payment after dishonour by non-acceptance.

104. Foreign bills of exchange must be protested for dishonour when such protest is required by the law of the place where they are drawn.

Protest of foreign bills.

¹ This paragraph was added by the Negotiable Instruments Act, 1885 (II of 1885), s. 5, printed, General Acts, Vol. V.

(Chapter IX.—Of Noting and Protest. Sec. 104A. Chapter X.—Of Reasonable time. Secs. 105-107. Chapter XI.—Of Acceptance and Payment for Honour and Reference in Case of Need. Sec. 108.)

When noting
equivalent to
protest.

¹ 104A. For the purposes of this Act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

CHAPTER X.

OF REASONABLE TIME.

Reasonable
time.

105. In determining what is a reasonable time for presentment for acceptance or payment, for giving notice of dishonour and for noting, regard shall be had to the nature of the instrument and the usual course of dealing with respect to similar instruments; and, in calculating such time, public holidays shall be excluded.

Reasonable
time of
giving notice
of dishonour.

106. If the holder and the party to whom notice of dishonour is given carry on business or live (as the case may be) in different places, such notice is given within a reasonable time if it is despatched by the next post or on the day next after the day of dishonour.

If the said parties carry on business or live in the same place, such notice is given within a reasonable time if it is despatched in time to reach its destination on the day next after the day of dishonour.

Reasonable
time for
transmitting
such notice.

107. A party receiving notice of dishonour, who seeks to enforce his right against a prior party, transmits the notice within a reasonable time if he transmits it within the same time after its receipt as he would have had to give notice if he had been the holder.

CHAPTER XI.

OF ACCEPTANCE AND PAYMENT FOR HONOUR AND REFERENCE IN CASE OF NEED.

Acceptance
for honour.

108. When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto. * * * *

¹ S. 104A was inserted by the Negotiable Instruments Act, 1885 (II of 1885), s. 6, printed, General Acts, Vol. V.

² Portion repealed by the Negotiable Instruments Act, 1885 (II of 1885), s. 7, has been omitted. That portion was as follows:—

“Unless the person who intends to accept *supra protest* first declares, in the presence of a notary, that he does it for honour and has such declaration duly recorded in the notarial register at the time, his acceptance shall be a nullity.”

(Chapter XI.—Of Acceptance and Payment for Honour and Reference in Case of Need. Secs. 109-116.)

109. A person desiring to accept for honour must, ¹[by writing on the bill under his hand] declare that he accepts under protest the protested bill for the honour of the drawer or of a particular indorser whom he names, or generally for honour. * * * * *

How acceptance for honour must be made.

110. Where the acceptance does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer.

Acceptance not specifying for whose honour it is made. Liability of acceptor for honour.

111. An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee do not: and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

But an acceptor for honour is not liable to the holder of the bill unless it is presented (or in case the address given by such acceptor on the bill is a place other than the place where the bill is made payable), forwarded for presentment, not later than the day next after the day of its maturity.

112. An acceptor for honour cannot be charged unless the bill has at its maturity been presented to the drawee for payment, and has been dishonoured by him, and noted or protested for such dishonour.

When acceptor for honour may be charged.

113. When a bill of exchange has been noted or protested for non-payment, any person may pay the same for the honour of any party liable to pay the same, provided that the person so paying ²[or his agent in that behalf] has previously declared before a notary public the party for whose honour he pays, and that such declaration has been recorded by such notary public.

Payment for honour.

114. Any person so paying is entitled to all the rights, in respect of the bill, of the holder at the time of such payment, and may recover from the party for whose honour he pays all sums so paid, with interest thereon and with all expenses properly incurred in making such payment.

Right of payer for honour.

115. Where a drawee in case of need is named in a bill of exchange, or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

Drawee in case of need.

116. A drawee in case of need may accept and pay the bill of exchange without previous protest.

Acceptance and payment without protest.

¹ These words were substituted for the words "in the presence of a notary public subscribe the bill with his own hand and" by the Negotiable Instruments Act, 1885 (II of 1885), s. 8, printed, General Acts, Vol. V.

² The words "and such declaration must be recorded by the notary in his register" were repealed by the Negotiable Instruments Act, 1885 (II of 1885), s. 8, printed, General Acts, Vol. V.

³ These words were inserted by the Negotiable Instruments Act, 1885 (II of 1885), s. 9, printed, General Acts, Vol. V.

(Chapter XII.—Of Compensation. Sec. 117. Chapter XIII.—Special Rules of Evidence. Sec. 118.)

CHAPTER XII.

OF COMPENSATION.

Rules as to
compensation.

117. The compensation payable in case of dishonour of a promissory note, bill of exchange or cheque, by any party liable to the holder or any indorsee, shall (except in cases provided for by the Code of Civil Procedure, section 532,) ¹ be determined by the following rules :—

- (a) the holder is entitled to the amount due upon the instrument, together with the expenses properly incurred in presenting, noting and protesting it ;
- (b) when the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places ;
- (c) an indorser who, being liable, has paid the amount due on the same is entitled to the amount so paid with interest at six per centum per annum from the date of payment until tender or realization thereof, together with all expenses caused by the dishonour and payment ;
- (d) when the person charged and such indorser reside at different places, the indorser is entitled to receive such sum at the current rate of exchange between the two places ;
- (e) the party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him. Such bill must be accompanied by the instrument dishonoured and the protest thereof (if any). If such bill is dishonoured, the party dishonouring the same is liable to make compensation thereof in the same manner as in the case of the original bill.

CHAPTER XIII.

SPECIAL RULES OF EVIDENCE.

Presumptions
as to negoti-
able instru-
ments—
of considera-
tion ;

118. Until the contrary is proved, the following presumptions shall be made :—

- (a) that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted,

¹ See now s. 583 of the Code of Civil Procedure (Act XIV of 1882), printed, General Acts, Vol. IV.

(Chapter XIII.—*Special Rules of Evidence. Secs. 119-122. Chapter XIV.*
—*Of Crossed Cheques. Sec. 123.*)

indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration ;

- (b) that every negotiable instrument bearing a date was made or drawn as to date ;
on such date ;
- (c) that every accepted bill of exchange was accepted within a reasonable as to time of
time after its date and before its maturity ; acceptance ;
- (d) that every transfer of a negotiable instrument was made before its as to time of
maturity ; transfer ;
- (e) that the indorsements appearing upon a negotiable instrument were as to order of
made in the order in which they appear thereon ; indorsements ;
- (f) that a lost promissory note, bill of exchange or cheque was duly as to stamp ;
stamped ;
- (g) that the holder of a negotiable instrument is a holder in due course : that holder is
a holder in
due course.
Provided that, where the instrument has been obtained from its
lawful owner, or from any person in lawful custody thereof, by
means of an offence or fraud, or has been obtained from the maker
or acceptor thereof by means of an offence or fraud, or for unlawful
consideration, the burthen of proving that the holder is a holder in
due course lies upon him.

119. In a suit upon an instrument which has been dishonoured, the Court shall, on proof of the protest, presume the fact of dishonour, unless and until such fact is disproved. Presumption
on proof of
protest.

120. No maker of a promissory note, and no drawer of a bill of exchange or cheque, and no acceptor of a bill of exchange for the honour of the drawer shall, in a suit thereon by a holder in due course, be permitted to deny the validity of the instrument as originally made or drawn. Estoppel
against deny-
ing original
validity of
instrument.

121. No maker of a promissory note and no acceptor of a bill of exchange payable to, or to the order of, a specified person shall, in a suit thereon by a holder in due course, be permitted to deny the payee's capacity, at the date of the note or bill, to indorse the same. Estoppel
against deny-
ing capacity
of payee to
indorse.

122. No indorser of a negotiable instrument shall, in a suit thereon by a subsequent holder, be permitted to deny the signature or capacity to contract of any prior party to the instrument. Estoppel
against deny-
ing signature
or capacity of
prior party.

CHAPTER XIV.

OF CROSSED CHEQUES.

123. Where a cheque bears across its face an addition of the words " and Cheque

*(Chapter XIV.—Of Crossed Cheques. Secs. 124-130.)*crossed
generally.

company " or any, abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, either with or without the words " not negotiable " that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

Cheque
crossed
specially.

124. Where a cheque bears across its face an addition of the name of a banker, either with or without the words " not negotiable, " that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

Crossing after
issue.

125. Where a cheque is uncrossed, the holder may cross it generally or specially.

Where a cheque is crossed generally, the holder may cross it specially.

Where a cheque is crossed generally or specially, the holder may add the words " not negotiable. "

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent, for collection.

Payment of
cheque
crossed
generally.

126. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

Payment of
cheque
crossed
specially.

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or his agent for collection.

Payment of
cheque cross-
ed specially
more than
once.

127. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

Payment in
due course of
crossed
cheque.

128. Where the banker on whom a crossed cheque is drawn has paid the same in due course, the banker paying the cheque, and (in case such cheque has come to the hands of the payee) the drawer thereof, shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively be entitled to and placed in if the amount of the cheque had been paid to and received by the true owner thereof.

Payment of
crossed
cheque out of
due course.

129. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same is crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

Cheque bear-
ing " not
negotiable."

130. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had.

(Chapter XIV.—Of Crossed Cheques. Sec. 131. Chapter XV.—Of Bills in Sets. Secs. 132-133. Chapter XVI.—Of International Law. Secs. 134-135.)

131. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

Non-liability of banker receiving payment of cheque.

CHAPTER XV.

OF BILLS IN SETS.

132. Bills of exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue payable only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

Set of bills.

Exception.—When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such part as if it were a separate bill.

133. As between holders in due course of different parts of the same set he who first acquired title to his part is entitled to the other parts and the money represented by the bill.

Holder of first acquired part entitled to all.

CHAPTER XVI.

OF INTERNATIONAL LAW.

134. In the absence of a contract to the contrary, the liability of the maker or drawer of a foreign promissory note, bill of exchange or cheque is regulated in all essential matters by the law of the place where he made the instrument, and the respective liabilities of the acceptor and indorser by the law of the place where the instrument is made payable.

Law governing liability of maker, acceptor or indorser of foreign instrument.

Illustration.

A bill of exchange was drawn by A in California, where the rate of interest is 25 per cent., and accepted by B, payable in Washington, where the rate of interest is 6 per cent. The bill is indorsed in British India, and is dishonoured. An action on the bill is brought against B in British India. He is liable to pay interest at the rate of 6 per cent. only; but, if A is charged as drawer, A is liable to pay interest at the rate of 25 per cent.

135. Where a promissory note, bill of exchange or cheque is made payable in a different place from that in which it is made or indorsed the law of the

Law of place of payment governs dishonour.

(Chapter XVI. — Of International Law. Secs. 136-137. Chapter XVII. —
Notaries Public. Secs. 138-139.)

place where it is made payable determines what constitutes dishonour and what notice of dishonour is sufficient.

Illustration.

A bill of exchange drawn and indorsed in British India, but accepted payable in France, is dishonoured. The indorsee causes it to be protested for such dishonour, and gives notice thereof in accordance with the law of France, though not in accordance with the rules herein contained in respect of bills which are not foreign. The notice is sufficient.

Instrument
made, etc.,
out of British
India, but in
accordance
with its law.

136. If a negotiable instrument is made, drawn, accepted or indorsed out of British India, but in accordance with the law of British India, the circumstance that any agreement evidenced by such instrument is invalid according to the law of the country wherein it was entered into does not invalidate any subsequent acceptance or indorsement made thereon in British India.

Presumption
as to foreign
law.

137. The law of any foreign country regarding promissory notes, bills of exchange and cheques shall be presumed to be the same as that of British India, unless and until the contrary is proved.

CHAPTER XVII.¹

NOTARIES PUBLIC.

Power to ap-
point notaries
public.

138. The Governor General in Council may, from time to time, by notification in the official Gazette, appoint any person, by name or by virtue of his office, to be a notary public under this Act and to exercise his functions as such within any local area, and may, by like notification, remove from office any notary public appointed under this Act.

Power to
make rules
for notaries
public.

139.² The Governor General in Council may, from time to time, by notification in the official Gazette, make rules consistent with this Act for the guidance and control of notaries public appointed under this Act, and may, by such rules (among other matters), fix the fees payable to such notaries.

SCHEDULE

[ENACTMENTS REPEALED.]

Rep. by the Repealing and Amending Act, 1891 (XII of 1891).

¹ Ch. XVII was inserted by the Negotiable Instruments Act, 1885 (II of 1885), s. 10, printed, General Acts, Vol. V.

² For rules under this section see Notification No. 1433, dated 30th September, 1886, Gazette of India, 1886, Pt. I, p. 548. On the extension of the Act to Upper Burma, similar rules were framed with respect to that Province, see Notification No. 489, dated 11th May, 1894, Burma Gazette, Pt. II, p. 109, printed, Burma Rules Manual, Ed. 1897, p. 81.

INDEX.

(The references are to pages of the Volume.)

-
- Administrator, *see* Probate and Administration Act, 1881.
- Administrator General's Act, 1881 375
- Assets, 376, 377.
- Certificates saved, 377.
- Examination on oath, 377.
- Letters of administration granted to Administrator General, 376.
 saved, 377. .
- Probate, granted to Administrator General, 376.
- Advocates, *see* Legal Practitioners Act, 1879.
- Arms, *see* Indian Arms Act, 1878.
- Bankers, *see* Negotiable Instruments Act, 1881.
- Bengal Bonded Warehouse Association, *see* Sea Customs Act, 1878.
- Bills of Exchange, *see* Negotiable Instruments Act, 1881.
- Borrowing, *see* Local Authorities Loans Act, 1879.
- Cancellation of instruments, *see* Specific Relief Act, 1877.
- Cattle-trespass, *see* Indian Forest Act, 1878.
- Caveats, *see* District Delegates Act, 1881 ; Probate and Administration Act, 1881.
- Cheques, *see* Negotiable Instruments Act, 1881.
- Clients, Agreements with, *see* Legal Practitioners Act, 1879.
- Coasting-trade, *see* Sea Customs Act, 1878.
- Codicil, *see* Probate and Administration Act, 1881.
- Contracts, *see* Indian Limitation Act, 1877 ; Specific Relief Act, 1877.
- Court-fees, *see* Presidency Magistrates (Court-fees) Act, 1877.
- Crown Factories, *see* Indian Factories Act, 1881.
- Customs, *see* Sea Customs Act, 1878.
- Deck and load lines, *see* Indian Merchant Shipping Act, 1880.
- Declaratory decree, *see* Specific Relief Act, 1877.
- Distressed Seamen, *see* Indian Merchant Shipping Act, 1880.
- Destruction of Records Act, 1879 254
- Chief Controlling Revenue-authority's power to make rules for disposal of records
 and documents of Revenue Courts, 255.
- Definitions, 255.
- Documents to be kept in accordance with law not to be destroyed, 255.
- High Court's power to make rules for disposal of records and documents, 254.
- Suits for disposal of records in accordance with rules barred, 255.
- Dishonour, *see* Negotiable Instruments Act, 1881.

- District Delegates Act, 1881 373
- Administration, Caveats against, 374.
- District Delegate when to grant, and when not to grant, 373, 374.
- procedure when District Delegate considers he should refuse letters of, 375.
- Caveats against probate, 374.
- District Delegate, High Court empowered to appoint, 373.
- Probate, Caveats against, 374.
- District Delegate when to grant, and when not to grant, 373, 374.
- procedure when District Delegate considers he should refuse, 375.
- Drawback, *see* Sea Customs Act, 1878.
- Duties of customs, *see* Sea Customs Act, 1878.
- Easements, *see* Indian Limitation Act, 1877.
- Elephants' Preservation Act, 1879 257
- Capture of wild elephants prohibited, except in certain cases, 258.
- Fees, recovery of, 259.
- Killing of wild elephants prohibited, except in certain cases, 258.
- License, rules for grant of, 258.
- to be produced on requisition of certain officers, 259.
- Limitation of prosecution, 259.
- Penalty for contravention, 258.
- Wild elephants, captured or killed by unlicensed person, property of Government, 258.
- European military lunatic, *see* Military Lunatics Act, 1877.
- Excise-duty, *see* Sea Customs Act, 1878.
- Executors, *see* Probate and Administration Act, 1881.
- Exportation, *see* Sea Customs Act, 1878.
- Extradition, *see* Foreign Jurisdiction and Extradition Act, 1879.
- Factories, *see* Indian Factories Act, 1881.
- Fairways, *see* Obstruction in Fairways Act, 1879.
- Farmers of opium revenue, *see* Opium Act, 1878.
- Fog-signals, *see* Indian Merchant Shipping Act, 1880.
- Foreign Jurisdiction and Extradition Act, 1879 288
- Bond to appear, arrest on breach of, 293.
- British Indian criminal law applied to British subjects abroad, 292.
- Commissions from Foreign Criminal Courts, 296.
- Definitions, 290.
- Extradition from British India of persons other than European British subjects, 292.
- requisition for, from any part of British dominions, 294.
- Governor General's jurisdiction beyond British India, and delegation thereof, 291.
- Justice of the Peace's appointment, powers and jurisdiction, 291.
- Political Agent, defined, 290.
- disposal of cases by, 294.

Foreign Jurisdiction and Extradition Act, 1879—*contd.*

Release of arrested person if proceedings not taken within certain time, 295.

Rules, 296.

Warrants, 293, 295.

Foreign law of limitation, *see* Indian Limitation Act, 1877.Foreign ships, *see* Indian Merchant Shipping Act, 1880.Forests, *see* Indian Forest Act, 1878.Hindu Wills Act, 1870, *see* Probate and Administration Act, 1881.Holidays, *see* Indian Factories Act, 1881 ; Negotiable Instruments Act, 1881.Importation, *see* Arms Act, 1878 ; Opium Act, 1878 ; Sea Customs Act, 1878.

Indian Arms Act, 1878. 243

Act not to bar prosecution under any other law, 252.

Census of fire-arms, 252.

Concealment, 249.

Confiscation, 250.

Conversion, manufacture, sale, 245.

Definitions, 244.

Exemption from prohibitions of Act, 251.

Exportation, 245.

Importation, 245.

Licenses, 248.

Limitation of prosecution, 252.

Manufacture, 245.

Penalties, 249.

Possession, 247.

Rules, 247.

Sale, conversion and manufacture, 245.

Sanction to prosecution required in certain cases, 252.

Searching station, 246.

Seizure, 250.

Transport, 246

Warehousing, 246.

Indian Factories Act, 1881 381

Accidents, 386.

Burden of proof of age, 388.

Certifying Surgeons, duties of, 384.
power to appoint, 382.

Children, employed, 385, 386.

Crown factories, 389.

Definitions, 381 and 382.

Fencing, 386.

Holidays, 384.

Inspectors, 382.

Occupier primarily liable for breaches of Act, 388.

Occupation of factory, 387.

Penalties, 387.

Rules, 388.

- Indian Factories Act, 1881—*contd.*
 Stoppages of work, 384.
 Women, employed, 384—386.
- Indian Forest Act, 1878 128
 Arrest without warrant, 150.
 Cattle-trespass Act, 1871, application of, 152.
 Confiscation, 149.
 Definitions, 129.
 Drift timber, 143, 146—147.
 Forest Officers, 152—153.
 pasture, 133—134.
 produce, 133—134, 143—144.
 settlement-officers, 131—132.
 Money due to Government, 155.
 Offences, power to compound, 151.
 power to interfere to prevent commission of, 151.
 power to try summarily, 151.
 Penalties and procedure, 146, 148.
 Protected forests, 138—140.
 Public servants, forest officers as such, 153.
 Reserved forests, 136—137.
 Rules, 139, 153.
 Seizure of property, 150.
 Village forests, 138.
- Indian Merchant Shipping Act, 1880 304
 Court of Survey, 309.
 Deck and load lines, 313, 314, 316.
 Definitions, 304, 305, 324.
 Detention, 311, 317.
 Distressed seamen, 319—321.
 Examination of ship surveyors, 332.
 Fog-signals, 326.
 Foreign ships overladen, 327.
 Inspectors of lights and fog-signals, 326.
 Local authority defined, 319.
 Offences, 327.
 Port Commissioners, 318.
 Receivers of Wreck, 325.
 Salvage, 325.
 Savings, 324.
 Scientific referees, 310, 311.
 Seaworthiness implied in contract for service, 306.
 Survey, 317.
 Surveyors, 323—324.
 Unsafe ships, 307.
 Unseaworthy ships, 306.
 Venue, 327.
 Wrecks, 325—326.

Indian Limitation Act, 1877	75
Computation of period of limitation, 77—83.	
Computation of time mentioned in instruments, 83.	
Continuous running of time in, 79.	
Definitions, 76.	
Disabilities, 78—79.	
Easements, 84—85.	
Foreign contracts, 79.	
Indian Registration Act, 1877	87
Application for registration, 53—54.	
Compulsory registration, 46.	
Commissions, 54.	
Definitions, 43.	
Documents executed in a foreign tongue, 60.	
„ out of British India, 50.	
exempted from registration, 69.	
unclaimed, 67.	
which may be registered, 47—48.	
„ must be registered, 46.	
Effect of registration and non-registration, 56.	
Exemptions from Act, 69.	
Fees, 65.	
Inspector General, 62.	
Optional registration, 47—48.	
Penalties, 66.	
Place of registration, 50.	
Refusal to register, 63—65.	
Registers, 65.	
Registering officers, 57, 60—62, 67—68.	
Sub-Registrar, special duties of, 61.	
Summonses, 54.	
Unavoidable delay in presentation for registration, 50.	
Who may present documents for registration, 51.	
Wills, 55—56.	
Indian Treasure Trove Act, 1878	119
Enquiry by Collector, 120.	
Limitation as to suit by person claiming, 120.	
Notice to be given by finder, 119.	
Penalty, 123.	
Procedure, 120—122.	
Injunctions, <i>see</i> Specific Relief Act, 1877.	
Insane soldiers, <i>see</i> Military Lunatics Act, 1877.	
Inspector General, <i>see</i> Indian Registration Act, 1877.	
Inspectors, <i>see</i> Indian Factories Act, 1881; Indian Merchant Shipping Act, 1880.	
Justice of the Peace, <i>see</i> Foreign Jurisdiction and Extradition Act, 1879.	
Legacy, <i>see</i> Probate and Administration Act, 1881.	

- Legal Practitioners Act, 1879 267
 Advocates, Vakils and Attorneys, 268.
 to be enrolled by High Court, 280.
 Agreements with clients, 278.
 Definitions, 268.
 Examiners, 279.
 Exemptions in favour of certain practitioners, 280.
 Fees for certificates, 276—277.
 Mukhtars, power to declare functions of, 271, 273.
 Penalties, 278, 279.
 Pleaders and Mukhtars, certificates, 270—273.
 Revenue Agents, certificates, 271, 273, 275.
 Suspension, 280.
 Touts, 279.
 Unprofessional conduct, 272, 276.
- Letters of administration, *see* Administrator General's Act, 1881; District Delegates Act, 1881; and Probate and Administration Act, 1881.
- Load lines, *see* Indian Merchant Shipping Act, 1880.
- Loans, *see* Local Authorities Loans Act, 1879.
- Local Authorities Loans Act, 1879 259
 Borrowing from private persons, 261.
 Definitions, 260.
 Loans not to be effected except under Act, 262.
 Remedy if loan not repaid, 261.
 not to defeat prior attachment, 261.
 Rules, 260, 262.
- Lunatics, *see* Military Lunatics Act, 1877; Probate and Administration Act, 1881.
- Mails, *see* Sea Customs Act, 1878.
- Mandamus, *see* Specific Relief Act, 1877.
- Manifest, *see* Sea Customs Act, 1878.
- Merchant Shipping, *see* Indian Merchant Shipping Act, 1880.
- Military Lunatics Act, 1877 71
 European military lunatics, 71.
 Native soldiers, 72.
- Minor, *see* Probate and Administration Act, 1881.
- Mukhtars, *see* Legal Practitioners Act, 1879.
- Municipal Taxation Act, 1881 378
 Power to prohibit levy of tax in certain cases, 378.
 Secretary of State to pay, 378.
- Negotiable Instruments Act, 1881 399
 Acceptance for honour, 420—421.
 Agency, 404.
 Bankers, 413, 424—425.
 Cheques, 401.
 Crossed cheques, 423.
 Definitions, 404.

- Negotiable Instruments Act, 1881—*contd.*
 Discharge from liability, 414—417.
 Dishonour, 417.
 Evidence, 422—423.
 Foreign bills, 419.
 Interest, 414.
 International law, 425—426.
 Maturity, 403.
 Notaries public, 427.
 Notice of dishonour, 417.
 „ „ protest, 419.
 Noting, 418.
 Parties to negotiable instruments, 404—408.
 Payment, 414, 420.
 Presentment, 411.
 Promissory notes, 400.
 Protest on dishonour, 418—419.
 Public holidays, 404.
 Suretyship, 406.
 Notaries public, *see* Negotiable Instruments Act, 1881.
 Noting, *see* Negotiable Instruments Act, 1881.
- Obstruction in Fairways Act, 1881 390
 Compensation for damage under Act, 392.
 Definitions, 391.
 Penalties, 392.
 Removal or destruction of obstruction, 390, 391.
 Rules, 392.
- Opium Act, 1878. 111
 Confiscation, 114—115.
 Cultivation of poppy, 114—117.
 Farmers, 113, 118.
 Importation, 113.
 Manufacture, 112.
 Possession, 113.
 Transport, 113.
 Penalties, 114, 118.
 Rules, 112, 115.
 Warehousing, 113.
- Pleaders, *see* Legal Practitioners Act, 1879.
 Political Agents, *see* Foreign Jurisdiction and Extradition Act, 1879.
 Poppy, *see* Opium Act, 1878.
 Port-clearance, *see* Sea Customs Act, 1878.
 Port Commissioners, *see* Indian Merchant Shipping Act, 1880.
 Ports, *see* Sea Customs Act, 1878.
 Practitioners, *see* Legal Practitioners Act, 1879.

- Presentment, *see* Negotiable Instruments Act, 1881.
- Presidency Banks Act, 1879 256
- Presidency Magistrates (Court-fees) Act, 1877 70
- Preventive relief, *see* Specific Relief Act, 1877.
- Probate and Administration Act, 1877 36
- Probate and Administration Act, 1881 339
- Administrator's duties and powers, 358—364.
- Alteration of grants, 348.
- Annuities, 364.
- Definitions, 340.
- Devastation, 370.
- District delegates, 347, 354.
- Executor's duties and powers, 358—364.
- Grant of probate and letters of administration, 341—357.
- Legacies, 362, 365, 366, 368.
- Limited grants, 344—347.
- Lunatic executor, 345.
- Residuary legatee, 343.
- Revocation of grants, 348, 349.
- Unadministered effects, 347.
- Vesting, 341.
- Wills, 352, 356.
- Promissory notes, *see* Negotiable Instruments Act, 1881.
- Protected forests, *see* Indian Forest Act, 1878.
- Protest on dishonour, *see* Negotiable Instruments Act, 1881.
- Public duties (enforcement), *see* Specific Relief Act, 1877.
- Public holidays, *see* Negotiable Instruments Act, 1881.
- Public servants, *see* Indian Forest Act, 1878 ; Specific Relief Act, 1877.
- Receivers, *see* Indian Merchant Shipping Act, 1880 ; Specific Relief Act, 1877.
- Records, *see* Destruction of Records Act, 1881.
- Recovery of possession, *see* Specific Relief Act, 1877.
- Rectification of instruments, *see* Specific Relief Act, 1877.
- Referee, *see* Indian Merchant Shipping Act, 1880.
- Registration and Limitation Acts Amendment Act, 1879 263
- Religious Societies Act, 1880 297
- Appointment of trustees, 297—298.
- Dissolution and adjustment of affairs, 298.
- Submission of questions to High Court, 299.
- Vesting of property, 298.
- Rescission of contracts, *see* Specific Relief Act, 1877.
- Reserved forests, *see* Indian Forest Act, 1878.
- Residuary legatee, *see* Probate and Administration Act, 1881.
- Revenue-agents, *see* Legal Practitioners Act, 1879.
- Salvage, *see* Indian Merchant Shipping Act, 1880.

Scientific Referee, *see* Indian Merchant Shipping Act, 1880.

Sea Customs Act, 1878 16

Appeals, 230—235.

Arrival and departure of vessels, 183—187.

Bengal Bonded Warehouse Association, 202.

Boarding stations, 171.

Cargo-boats, 190.

Coasting-trade, 209—212.

Confiscation, 230, 234.

Custom-houses, 171.

Customs-duties, 175—181.

Discharge of cargo, 190.

Drawback, 181.

Entry inwards, 190.

Entry outwards, 185.

Excise duty on country goods, 177.

Export, 174, 204.

Import, 172—173.

Landing stations, 171.

Manifest, 184, 210.

Offences and penalties, 213—229.

Officer's appointment and powers, 170.

Port-clearance, 185—187.

Ports, 171.

Procedure relating to offences and appeals, 230—235.

Re-landing, 204.

Rules, 237.

Samples, 237.

Shipment, 204.

Spirits, 206—209.

Tariff values, 176, 199.

Transshipment, 202.

Undervalued goods, 178.

Vessels in port, 187—190.

Warehouses, 171, 193—202.

Wharves, 171.

Seaworthiness, *see* Indian Merchant Shipping Act, 1880.

Secretary of State, *see* Municipal Taxation Act, 1881.

Soldiers, *see* Military Lunatics Act, 1877.

Specific performance, *see* Specific Relief Act, 1877.

Specific Relief Act, 1877

Cancellation of instruments, 26.

Compensation, 13.

Declaratory decrees, 27.

Definitions, 6.

Specific Relief Act, 1877—*concl'd.*

Enforcement of public duties, 29.

Injunctions, 31—36.

Mandamus barred, 30.

Preventive relief, 7.

Public servants' orders, 29.

Receivers, 29.

Recovery of possession of property, 7—9.

Rectification of instruments, 24.

Relief not to be granted merely to enforce penal law, 7.

Rescission of contracts, 25.

Specific performance of contracts, 9—24.

Spirits, *see* Sea Customs Act, 1878.Suretyship, *see* Negotiable Instruments Act, 1881.Survey and Surveyors, *see* Indian Merchant Shipping Act, 1880.Tariff-values, *see* Sea Customs Act, 1878.Taxation, *see* Municipal Taxation Act, 1877.Touts, *see* Legal Practitioners Act, 1879.Transshipment, *see* Sea Customs Act, 1878.Treasure Trove, *see* Indian Treasure Trove Act, 1878.Trustees, *see* Religious Societies Act, 1880.Unadministered effects, *see* Probate and Administration Act, 1881.Undervalued goods, *see* Sea Customs Act, 1878.Unprofessional conduct, *see* Legal Practitioners Act, 1879.Unseaworthy ship, *see* Indian Merchant Shipping Act, 1880.Village forests, *see* Indian Forest Act, 1878.Warehouse and warehousing, *see* Indian Arms Act, 1879 ; Sea Customs Act, 1878.Wharves, *see* Sea Customs Act, 1878.Wild elephants, *see* Elephants' Preservation Act, 1879.Will, *see* Indian Registration Act, 1877 ; Probate and Administration Act, 1881.Wreck, *see* Indian Merchant Shipping Act, 1880.

LIST OF THE BOOKS AND PUBLICATIONS FOR SALE WHICH ARE LESS THAN TWO YEARS OLD.

LEGISLATIVE DEPARTMENT.

[These publications may be obtained from the Office of the Superintendent of Government Printing, India, No. 8, Hastings Street, Calcutta.]

The prices of the General Acts, Local Codes, Merchant Shipping Digest and Index to Enactments have been considerably reduced.

I.—THE INDIAN STATUTE-BOOK.

REVISED EDITION.

Super-royal 8vo, cloth, lettered.

A.—GENERAL ACTS.

The unrepealed General Acts of the Governor General in Council, Vol. I, from 1834 to 1867; Vol. II, from 1868 to 1876, and Vol. III from 1877 to 1881.

In the Press.

The unrepealed General Acts of the Governor General in Council, Vol. IV, from 1882 to 1884; Vol. V, from 1885 to 1890; inclusive. Third edition.

B.—LOCAL CODES.

The Assam Code, Ed. 1897; containing the Bengal Regulations, Local Acts of the Governor General in Council, Regulations made under the Government of India Act, 1870 (33 Vict., cap. 3), and Acts of the Lieutenant-Governor of Bengal in Council in force in Assam; and lists of the enactments which have been notified for Scheduled Districts in Assam under the Scheduled Districts Act (XIV of 1874); with Chronological Tables and an Index. **Rs. 7.** (10a.)

In the Press.

The Burma Code, Third Edition.

II.—REPRINTS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL, AS MODIFIED BY SUBSEQUENT LEGISLATION.

- Act VIII of 1851 (Tolls on Roads and Bridges), as modified up to 1st June, 1897. 2a. 6p. (1a.)
- Act III of 1858 (State Prisoners), as modified up to 1st August, 1897. 2a. (1a.)
- Act XVI of 1861 (Stage carriages), as modified up to 1st February, 1898. 3a. 6p. (1a.)
- Act XXIII of 1863 (Claims to Waste-lands), as modified up to 1st December, 1896. 4a. 9p. (1a.)
- Act XIV of 1866 (Indian Post Office), as modified up to 15th September, 1896. 7a. (1a. 6p.)
- Act III of 1867 (Gambling), as modified up to 1st December, 1896. 4a. (1a.)
- Act VII of 1870 (Court-fees), as modified up to 1st December, 1896. R1. (2a.)
- Act XXVII of 1871 (Criminal Tribes), as modified up to 1st February, 1897. 5a. 6p. (1a. 6p.)
- Act I of 1872 (Evidence), as modified up to 1st May, 1891, with footnotes brought down to 15th December, 1896. R1. (2a.)
- Act X of 1873 (Oaths), as modified up to 15th December, 1896. 3a. 3p. (1a.)
- Act III of 1877 (Registration), as modified up to 1st December, 1896, with footnotes brought down to 1st August, 1898. 11a. (2a.)
- Act I of 1878 (Opium), as modified up to 1st December, 1896. 4a. 9p. (1a.)
- Act XI of 1878 (Arms), as modified up to 1st December, 1896. 5a. 6p. (1a. 6p.)
- Act XX of 1879 (Glanders and Farcy), as modified up to 1st October, 1896. 3a. 3p. (1a.)
- Act XII of 1881 (The North-Western Provinces Rent Act), as modified up to 1st July, 1897. R1-6. (2a.)
- Act XV of 1881 (Factories), as modified up to 1st April, 1891, with footnotes brought down to 1st August, 1898. 5a. 6p. (1a. 6p.)
- Act XXVI of 1881 (Negotiable Instruments), as modified up to 1st August, 1897. 10a. (1a.)
- Act V of 1882 (Indian Easements), as amended by the Repealing and Amending Act, 1891 (XII of 1891). 8a. (1a.)
- Act V of 1883 (Indian Merchant Shipping), as modified up to 1st April, 1898. 6a. (1a.)
- Act XIX of 1883 (Land Improvement Loans), as modified up to 15th December, 1896. 2a. 6p. (1a.)
- Act XXI of 1883 (Emigration), as modified up to 5th March, 1897. 11a. (1a. 6p.)
- Act XII of 1884 (Agriculturists' Loans), as modified up to 15th December, 1896. 1a. 3p. (1a.)
- Act XII of 1886 (Petroleum), as modified up to 1st May, 1898. 6a. 6p. (1a. 6p.)

II.—REPRINTS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL, AS MODIFIED BY SUBSEQUENT LEGISLATION—*concl'd.*

Act IX of 1887 (Provincial Small Cause Courts), as modified up to 1st December, 1896. 6*a.* (1*a.*)

Act X of 1889 (Ports), as modified up to 1st December, 1896. 11*a.* (2*a.*)

Act XIV of 1891 (Oudh Courts), as amended by the Oudh Courts Act (1891) Amendment Act, 1897. 1*a.* 3*p.* (1*a.*)

Regulation III of 1872 (Sonthal Parganas Settlement), as modified up to 1st May, 1898. 6*a.* (1*a.*)

Regulation III of 1876 (Andaman and Nicobar Islands), as modified up to 1st February, 1897. 5*a.* 6*p.* (1*a.*)

Regulation II of 1881 (Coorg Courts), as modified up to 1st February, 1897. 3*a.* 9*p.* (1*a.*)

Regulation III of 1886 (Sonthal Parganas Laws), as modified up to 1st February, 1897. 1*a.* 9*p.* (1*a.*)

Regulation VI of 1886 (Ajmere Rural Boards), as modified up to 1st February, 1897. 5*a.* 6*p.* (1*a.*)

III.—ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL AS ORIGINALLY PASSED.

Acts (unrepealed) of the Governor General of India in Council from 1896 up to date.

Regulations made under the Statute 33 Vict., cap. 3, from 1896 up to date.

The above may be obtained separately. The price is noted on each.

IV.—TRANSLATIONS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

Act XIV of 1866 (Indian Post Office), as modified up to 15th September, 1896. In Urdu. 3*a.* 3*p.* (1*a.* 6*p.*)

Ditto. In Nagri. 3*a.* (1*a.* 6*p.*)

Act III of 1867 (Gambling), as modified up to 1st December, 1896.

In Urdu. 1*a.* 3*p.* (1*a.*)

Ditto. In Nagri. 2*a.* (1*a.*)

Act I of 1872 (Evidence), as modified up to 1st May, 1891 (with footnotes brought down to 15th December, 1896). In Urdu. 8*a.* (2*a.*)

Act X of 1873 (Oaths), as modified up to 15th December, 1896.

In Urdu. 9*p.* (1*a.*)

Ditto. In Nagri. 1*a.* (1*a.*)

IV.—TRANSLATIONS OF ACTS AND REGULATIONS OF
THE GOVERNOR GENERAL OF INDIA IN COUN-
CIL—*contd.*

- Act III of 1877 (Registration), as modified up to 1st December, 1896.
In Urdu. 4a. 3p. (2a.)
- Act I of 1878 (Opium), as modified up to 1st December, 1896.
In Urdu. 1a. 3p. (1a.)
- Ditto. In Nagri. 1a. 6p. (1a.)
- Act XI of 1878 (Arms), as modified up to 1st December, 1896.
In Urdu. 2a. (1a.)
- Ditto. In Nagri. 1a. 3p. (1.)
- Act XX of 1879 (Glanders and Farcy), as modified up to 1st October, 1896. In Urdu. 1a. (1a.)
- Ditto. In Nagri. 1a. (1a.)
- Act XIX of 1883 (Land Improvement Loans), as modified up to 15th December, 1896. In Urdu. 1a. (1a.)
- Ditto. In Nagri. 1a. (1a.)
- Act XII of 1884 (Agriculturists' Loans), as modified up to 15th December, 1896. In Urdu. 6p. (1a.)
- Ditto. In Nagri. 6p. (1a.)
- Act IX of 1887 (Provincial Small Cause Courts), as modified up to 1st December, 1896. In Urdu. 2a. 3p. (1a.)
- Ditto. In Nagri. 2v. 6p. (1a.)
- Act VIII of 1896 (Inland Bonded Warehouses). In Urdu. 3p. (1a.)
- Ditto. In Nagri. 3p. (1a.)
- Act XII of 1896 (Excise). In Urdu. 1a. 9p. (1a.)
- Ditto. In Nagri. 1a. 9p. (1a.)
- Act XIV of 1896 (Post Office Act Amendment). In Urdu. 3p. (1a.)
- Ditto. In Nagri. 3p. (1a.)
- Act XV of 1896 (Glanders and Farcy Act Amendment). In Urdu. 3p. (1a.)
- Ditto. In Nagri. 3p. (1a.)
- Act XXI of 1896 (Indian Paper Currency Act Amendment). In Urdu. 3p. (1a.)
- Ditto. In Nagri. 3p. (1a.)
- Act I of 1897 (Act XXXVII of 1850, Amendment). In Urdu. 3p. (1a.)
- Ditto. In Nagri. 3p. (1a.)
- Act II of 1897 (Criminal Tribes Act Amendment). In Urdu. 3p. (1a.)
- Act III of 1897 (Epidemic Diseases). In Urdu. 3p. (1a.)
- Ditto. In Nagri. 3p. (1a.)
- Act IV of 1897 (Fisheries). In Urdu. 3p. (1a.)
- Ditto. In Nagri. 3p. (1a.)

IV.—TRANSLATIONS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUN- CIL—*contd.*

- Act VI of 1897 (Negotiable Instruments Act Amendment). In Urdu. 3*p.* (1*a.*)
Ditto. In Nagri. 3*p.* (1*a.*)
- Act VII of 1897 (Indian Emigration Act Amendment). In Urdu. 3*p.* (1*a.*)
Ditto. In Nagri. 3*p.* (1*a.*)
- Act VIII of 1897 (Reformatory Schools). In Urdu. 3*p.* (1*a.*)
Ditto. In Nagri. 9*p.* (1*a.*)
- Act IX of 1897 (Provident Funds). In Urdu. 3*p.* (1*a.*)
Ditto. In Nagri. 3*p.* (1*a.*)
- Act X of 1897 (General Clauses). In Urdu. 1*a.* (1*a.*)
Ditto. In Nagri. 1*a.* (1*a.*)
- Act XII of 1897 (Local Authorities (Emergency) Loans). In Urdu. 3*p.* (1*a.*)
Ditto. In Nagri. 3*p.* (1*a.*)
- Act XIII of 1897 (Indian Stamp Act (1879) Amendment). In Urdu. 3*p.* (1*a.*)
Ditto. In Nagri. 3*p.* (1*a.*)
- Act XV of 1897 (Cantonments). In Urdu. 3*p.* (1*a.*)
- Act I of 1898 (Stage Carriages Act (1861) Amendment). In Urdu. 3*p.* (1*a.*)
Ditto. In Nagri. 3*p.* (1*a.*)
- Act II of 1898 (Indian Paper Currency). In Urdu. 3*p.* (1*a.*)
Ditto. In Nagri. 3*p.* (1*a.*)
- Act IV of 1898 (Indian Penal Code Amendment). In Urdu. 3*p.* (1*a.*)
Ditto. In Nagri. 3*p.* (1*a.*)
- Act V of 1898 (Criminal Procedure Code). In Urdu. R1-3-3. (6*a.*)
Ditto. In Nagri. R1-6. (6*a.*)
- Act VI of 1898 (Post Office). In Urdu. 2*a.* (1*a.*)
Ditto. In Nagri. 2*a.* (1*a.*)
- Regulation VIII of 1896 (British Baluchistan Criminal Justice). In Urdu. 9*p.* (1*a.*)
- Regulation IX of 1896 (British Baluchistan Civil Justice). In Urdu. 2*a.* 3*p.* (1*a.*)
- The Baluchistan Agency Criminal Justice Law, 1896. In Urdu. 9*p.* (1*a.*)
- The Baluchistan Agency Civil Justice Law, 1896. In Urdu. 2*a.* 6*p.* (1*a.*)

In the Press.

- Act VII of 1870 (Court-fees), as modified up to 1st December, 1896.
In Urdu.
- Ditto. In Nagri.

IV.—TRANSLATIONS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUN- CIL—*concl'd.*

Act I of 1872 (Evidence), as modified up to 1st May, 1891, with foot-
notes brought down to 15th December, 1896. In Nagri.

Act III of 1877 (Registration), as modified up to 1st December,
1896. In Urdu. 4a 3p. (2a.)

Ditto. In Nagri. 4a. 6p. (2a.)

Act III of 1898 (Leper). In Urdu. 6p. (1a.)

Ditto. In Nagri. 6p. (1a.)

Act VIII of 1898 (Indian Paper Currency Act Amendment). In
Urdu. 3p. (1a.)

Ditto. In Nagri. 3p. (1a.)

V.—MISCELLANEOUS PUBLICATIONS.

Annual Indices to the Acts of the Governor General of India in
Council, for 1896 and 1897. The price is noted on each.

Proceedings of the Council of the Governor General of India
assembled for the purpose of making Laws and Regulations,
from 1896 to date. Super-royal 4to. Annual subscription Rs. (R1);
single issue 4a. including postage.

Index to Indian Statutes: Chronological Tables and Index of the
Indian Statutes, compiled under the orders of the Government of India by
F. G. Wigley, of the Inner Temple, Barrister-at-Law. Two Volumes. R12.
(R1.)

*Copies of the first edition, compiled by Stephen Jacob, I.C.S., and of the second
edition, compiled by W. F. Agnew, Barrister-at-Law, can be had at R2.
(12a.)*

LIST OF THE BOOKS AND PUBLICATIONS FOR SALE WHICH ARE MORE THAN TWO YEARS OLD.

LEGISLATIVE DEPARTMENT.

[These publications may be obtained from the Office of the Superintendent of Government Printing, India, No. 8, Hastings Street, Calcutta.]

The prices of the General Acts, Local Codes, Merchant Shipping Digest and Index to Enactments have been considerably reduced.

I.—THE INDIAN STATUTE-BOOK.

REVISED EDITION.

Super-royal 8vo, cloth, lettered.

[The Collection of Statutes relating to India (Ed. 1881), the volumes of General Acts for 1877-84, the Baluchistan Code (Ed. 1890), the Burma Code (Ed. 1889), the Central Provinces Code (Ed. 1891) and the North-Western Provinces and Oudh Code (Ed. 1892), are out of print.]

A.—GENERAL ACTS.

The General Acts from 1834 to 1866, Ed. 1887. R5. (12a.)

The General Acts from 1867 to 1876, Ed. 1887. R5. (12a.)

The General Acts from 1885 to 1888, Ed. 1889. R5. (6a.)

B.—LOCAL CODES.

The Ajmere Code, Ed. 1883. R3. (7a.)

The Bengal Code, Vol. I, Ed. 1889; containing the Bengal Regulations, the Local Acts of the Governor General in Council and the Regulations made under 33 Vict., cap. 3, in force in Bengal. R5. (10a.)

The Bengal Code, Vol. II, Ed. 1890; containing the Acts of the Lieutenant-Governor of Bengal in Council in force in Bengal. R5. (R1.)

The Coorg Code, Ed. 1893. R2. (6a.)

The Madras Code, Ed. 1888. R5. (10a.)

The Punjab Code, Ed. 1888. R4. (8a.)

The Bombay Code, Vol. I, Ed. 1894; containing the unrepealed Bombay Regulations and the Local Acts of the Governor General in Council and the Regulations made under the Statute 33 Vict., cap. 3, in force in Bombay. R4. (8a.)

The Bombay Code, Vol. II, Ed. 1896; containing the unrepealed Acts of the Governor of Bombay in Council up to the end of the year 1880. R5. (10a.)

The Bombay Code, Vol. III, Ed. 1896; containing the unrepealed Acts of the Governor of Bombay in Council from 1881 to 1895. R6. (12a.)

I.—THE INDIAN STATUTE-BOOK—*concl'd.*

C.—CHRONOLOGICAL TABLES.

Chronological Tables of Enactments of British Indian Legislatures, with repeals and amendments noted up to 1st November, 1895 :—

Part I, comprising Enactments passed by the Governor General in Council or by the Governor General alone. 12*a.* (3*a.*)

Part II, comprising Enactments passed by Local Legislatures. 12*a.* (3*a.*)

II.—REPRINTS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL, AS MODIFIED BY SUBSEQUENT LEGISLATION.

Acts X of 1841 and XI of 1850 (Registration of Ships), as modified up to 1st December, 1893. 7*a.* (1*a.*)

Act XX of 1847 (Copyright), as modified up to 1st May, 1896. 5*a.* (1*a.* 6*p.*)

Act IV of 1857 (Tobacco, Bombay Town), as modified up to 1st August, 1895. 3*a.* 9*p.* (1*a.*)

Act XXIX of 1857 (Land Customs, Bombay), as modified up to 1st December, 1895. 4*a.* (1*a.*)

Act XLV of 1860 (Indian Penal Code), as modified up to 1st May, 1896, with an Index. R2-8. (5*a.*)

Act V of 1861 (Police), as modified up to 1st March, 1895. 6*a.* 6*p.* (1*a.* 6*p.*)

Act VI of 1864 (Whipping), as modified up to 1st March, 1895. 3*a.* 6*p.* (1*a.*)

Act XVII of 1864 (Official Trustees), as modified up to 1st July, 1890. 5*a.* 6*p.* (1*a.*)

Act X of 1865 (Succession), as modified up to 1st July, 1890. R1-8. (2*a.*)

Act XXV of 1867 (Printing presses and Books), as modified up to 1st July, 1890. 5*a.* (1*a.*)

Act V of 1869 (Indian Articles of War), as modified up to 1st January, 1895, with an Index. R1-2. (2*a.*)

Act XX of 1869 (Volunteers), as modified up to 1st May, 1896. 4*a.* 9*p.* (1*a.*)

Act XXIII of 1870 (Coinage), as modified up to 27th June, 1893; with an Appendix containing the Indian Coinage and Paper Currency Act, 1893, and the Notifications by the Government of India in the Finance and Commerce Department, Nos. 2662, 2663 and 2664, dated the 26th June, 1893, connected therewith. 4*a.* 9*p.* (1*a.*)

Act I of 1871 (Cattle-trespass), as modified up to 1st March, 1891. 5*a.* (1*a.*)

Act V of 1871 (Prisoners), as modified up to 1st May, 1894. 5*a.* 6*p.* (1*a.*)

Act III of 1872 (Marriage), as modified up to 1st June, 1893. 4*a.* 6*p.* (1*a.*)

I.—REPRINTS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL, AS MODIFIED BY SUBSEQUENT LEGISLATION—*contd.*

- Act IV of 1872 (Punjab Laws), as modified up to 1st July, 1891. 7a.
(1a.)
- Act IX of 1872 (Contract), as modified up to 1st May, 1896. R1-4.
(3a.)
- Act XV of 1872 (Christian Marriage), as modified up to 1st January, 1894. 10a. (2a.)
- Act V of 1873 (Savings Banks), as modified up to 1st July, 1894.
3a 6p. (1a.)
- Act II of 1874 (Administrator General), as modified up to 1st July, 1890; with a list of Native States included within the Presidencies of Bengal, Madras and Bombay, respectively, for the purposes of Act. 11a. (2a.)
- Act XIV of 1874 (Scheduled Districts), as modified up to 1st October, 1895. 6a. (1a.)
- Act XV of 1874 (Laws Local Extent), as modified up to 1st October, 1895. 7a. (1a.)
- Act XV of 1877 (Limitation), as modified up to 1st December, 1892.
12a. (2a.)
- Act I of 1877 (Specific Relief), as modified up to 1st May, 1896. 11a.
(2a.)
- Act VII of 1878 (Forests), as modified up to 1st December, 1894.
10a. (2a.)
- Act VIII of 1878 (Sea Customs), as modified up to 1st July, 1891.
R1-5-3. (4a.)
- Act I of 1879 (Stamps), as modified up to 1st November, 1895; with Appendices containing Notifications reducing and remitting stamp-duties and publishing rules under the Act. R1. (2a.)
- Act XVII of 1879 (Dekkhan Agriculturists' Relief), as modified up to 1st March, 1895. 10a. (2a.)
- Act XVIII of 1879 (Legal Practitioners), as modified up to 1st May, 1896. 7a. 6p. (1a.)
- Act XXI of 1879 (Foreign Jurisdiction and Extradition), as modified up to 1st May, 1896. 4a. 9p. (1a.)
- Act VII of 1880 (Merchant Shipping), as modified up to 15th October, 1891. 10a. (2a.)
- Act V of 1881 (Probate and Administration), as modified up to 1st July, 1890. 12a. (2a.)
- Act XV of 1881 (Factories), as modified up to 1st April, 1891. 5a.
(1a.)
- Act XVIII of 1881 (Central Provinces Land-revenue), as modified up to 1st January, 1895. R1-2. (2a.)
- Act XIX of 1881 (Lower Burma Forests), as modified up to 1st July, 1890. 10a. (2a.)
- Act I of 1882 (Assam Labour and Emigration), as modified up to 1st May, 1893. R1-2. (2a.)

II.—REPRINTS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL, AS MODIFIED BY SUBSEQUENT LEGISLATION—*contd.*

Act IV of 1882 (Transfer of Property), as modified up to 1st April, 1893. 15*a.* (2*a.*)

Act VI of 1882 (Companies), as modified up to 1st August, 1895; with Appendices containing Table B in the Schedule to Act XIX of 1857 and the Indian Companies (Memorandum of Association) Act, 1895. R1-10. (3*a.* 6*p.*)

Act XII of 1882 (Salt), as modified up to 1st December, 1890. 6*a* (1*a.*)

Act XIV of 1882 (Civil Procedure), as modified up to 1st July, 1888. R3. (6*a.*)

Act XV of 1882 (Presidency Small Cause Courts), as modified up to 1st February, 1895. 10*a.* (2*a.*)

Act XX of 1882 (Paper Currency), as modified up to 27th June, 1893; with an Appendix containing the Indian Coinage and Paper Currency Act, 1893, and the Notifications by the Government of India in the Finance and Commerce Department, Nos 2662, 2663 and 2664, dated the 26th June, 1893, connected therewith. 5*a.* 6*p.* (1*a.* 6*p.*)

Act VIII of 1883 (Little Cocos and Preparis Islands Laws), as modified up to 1st January, 1895. 1*a.* 3*p.* (1*a.*)

Act IX of 1883 (Central Provinces Tenancy), as modified up to 1st December, 1894. 10*a.* (2*a.*)

Act IV of 1884 (Explosives), as modified up to 1st May, 1896. 4*a.* 6*p.* (1*a.*)

Act VI of 1884 (Inland Steam-vessels), as modified up to 1st July, 1891. 9*a.* (2*a.*)

Act VII of 1884 (Steam-ships), as modified up to 1st July, 1890. 6*a.* (1*a.*)

Act XVII of 1884 (Lower Burma Municipalities), as modified up to 1st August, 1895. R1. (2*a.* 6*p.*)

Act XVIII of 1884 (Punjab Courts), as modified up to 1st April, 1891. 7*a.* (1*a.* 6*p.*)

Act II of 1886 (License-tax amendment), as modified up to 1st July, 1894. 8*a.* (1*a.* 6*p.*)

Act VI of 1886 (Births, Deaths and Marriages Registration), as modified up to 1st June, 1891. 6*a.* (1*a.*)

Act XII of 1886 (Petroleum), as modified up to 1st June, 1893. 6*a.* (1*a.*)

Act IV of 1889 (Merchandise Marks), as modified up to 1st June, 1891. 6*a.* (1*a.*)

Act XIII of 1889 (Cantonments), as modified up to 1st March, 1895. 7*a.* (1*a.*)

Act IX of 1890 (Railways), as modified up to 1st May, 1896; with an Index. 15*a.* (3*a.*)

Act VIII of 1894 (Tariff), as modified up to 1st March, 1896. 9*a.* (2*a.*)

II.—REPRINTS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL, AS MODIFIED BY SUBSEQUENT LEGISLATION—*concl'd.*

Regulation I of 1886 (Assam Land and Revenue), as modified up to 1st June, 1894. 13*a.* (2*a.*)

Regulation XIV of 1887 (Upper Burma Villages), as modified up to 1st April, 1891. 5*a.* (1*a.*)

III.—ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL, AS ORIGINALLY PASSED.

Acts (unrepealed) of the Governor General of India in Council from 1854 to 1895.

Regulations made under the Statute 33 Vict., cap. 3, from No. II of 1875 to 1895, 8vo, stitched.

The above may be obtained separately. The price is noted on each.

IV.—TRANSLATIONS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

Act XX of 1847 (Copyright), as modified up to 1st May, 1896. In Urdu. 1*a.* 3*p.* (1*a.*)

Ditto. In Nagri. 1*a.* 3*p.* (1*a.*)

Act XXXVI of 1858 (Lunatic Asylums), as modified up to 1st March, 1893. In Urdu. 1*a.* 3*p.* (1*a.*)

Act XLV of 1860 (Penal Code), as modified up to 1st January, 1893. In Urdu. R*1.* (5*a.*)

Act V of 1861 (Police), as modified up to 1st March, 1895. In Urdu. 2*a.* 3*p.* (1*a.*)

Ditto. In Nagri. 2*a.* 3*p.* (1*a.*)

Act VI of 1864 (Whipping), as modified up to 1st March, 1895. In Urdu. 1*a.* (1*a.*)

Act V of 1869 (Indian Articles of War), as modified up to 1st January, 1895. In English, Urdu and Nagri. Bound. R*3.* (5*a.*)

Ditto. Unbound. R*2-8.* (5*a.*)

Act VII of 1870 (Court-fees), as modified up to 1st July, 1891; with an Appendix containing Notification No. 4650, dated 10th September, 1889, reducing and remitting Court-fees, and an Index. In Urdu. 8*a.* (2*a.* 6*p.*)

Act XXIII of 1870 (Coinage), as modified up to 27th June, 1893; with an Appendix containing the Indian Coinage and Paper Currency Act, 1893, and the Notifications by the Government of India in the Finance and Commerce Department, Nos. 2662, 2663 and 2664, dated the 26th June, 1893, connected therewith. In Urdu. 1*a.* 3*p.* (1*a.*)

Act I of 1871 (Cattle-trespass), as modified up to 1st March, 1891. In Urdu. 1*a.* 9*p.* (1*a.*)

IV—TRANSLATIONS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUN- CIL—*contd.*

Act V of 1871 (Prisoners), as modified up to 1st May, 1894. In Urdu. 1a. 9p. (1a.)

Act I of 1872 (Evidence), as modified up to 1st May, 1891. In Urdu. 8a. (2a.)

Act IV of 1872 (Punjab Laws), as modified up to 1st July, 1891. In Urdu. 2a. 6p. (1a. 6p.)

Act IX of 1872 (Contract), as modified up to 1st June, 1893. In Urdu. 12a. (4a.)

Act XV of 1872 (Christian Marriage), as modified up to 1st April, 1891. In Urdu. 4a. (2a.)

Ditto. In Nagri. 4a. (2a.)

Act I of 1877 (Specific Relief), as modified up to 1st July, 1894. In Urdu. 5a. (1a. 6p.)

Act III of 1877 (Registration), as modified up to 1st December, 1892. In Urdu. 4a. (2a.)

Act XV of 1877 (Limitation), as modified up to 1st December, 1892. In Urdu. 4a. 6p. (2a.)

Act VII of 1878 (Forests), as modified up to 1st December, 1894. In Urdu. 4a. (1a. 6p.)

Ditto. In Nagri. 3a. 9p. (1a. 6p.)

Act I of 1879 (Stamps), as modified up to 1st July, 1894; with Appendices containing notifications reducing and remitting stamp-duties, and publishing rules under the Act. In Urdu. 10a. 6p. (3a.)

Act XVIII of 1879 (Legal Practitioners), as modified up to 1st May, 1896. In Urdu. 2a. 6p. (1a.)

Ditto. In Nagri. 2a. 6p. (1a.)

Act XXI of 1879 (Foreign Jurisdiction and Extradition), as modified up to 1st May, 1896. In Urdu. 1a. 6p. (1a.)

Ditto. In Nagri. 1a. 6p. (1a.)

Act XV of 1881 (Factories), as modified up to 1st April, 1891. In Urdu. 1a. 6p. (1a.)

Ditto. In Nagri. 1a. 6p. (1a.)

Act XVIII of 1881 (Central Provinces Land-revenue), as modified up to 1st January, 1895. In Urdu. 8a. (3a.)

Ditto. In Nagri. 8a. (2a.)

Act I of 1882 (Assam Labour and Emigration), as modified up to 1st May, 1893. In Urdu. 6a. (2a.)

Ditto. In Nagri. 6a. (2a.)

Act XX of 1882 (Paper Currency), as modified up to 27th June, 1883; with an Appendix containing the Indian Coinage and Paper Currency Act, 1893, and the Notifications by the Government of India in the Finance and Commerce Department, Nos. 2662, 2663 and 2664, dated the 26th June, 1893, connected therewith. In Urdu. 1a. 6p. (1a.)

IV.—TRANSLATIONS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUN- CIL—*contd.*

- Act IX of 1883 (Central Provinces Tenancy), as modified up to 1st December, 1894. In Urdu. 4a. (1a. 6p.)
Ditto. In Nagri. 4a. (1a. 6p.)
- Act IV of 1884 (Explosives), as modified up to 1st May, 1896. In Urdu. 1a. 3p. (1a.)
Ditto. In Nagri. 1a. 3p. (1a.)
- Act XVIII of 1884 (Punjab Courts), as modified up to 1st May, 1894. In Urdu. 2a. 6p. (1a. 6p.)
- Act XIII of 1885 (Telegraphs), as modified up to 1st March, 1893. In Urdu. 1a. 9p. (1a.)
- Act III of 1888 (Police), as modified up to 1st March, 1893. In Urdu. 6p. (1a.)
- Act IV of 1888 (Indian Reserve Forces), as modified up to 1st March, 1893. In Urdu. 3p. (1a.)
- Act IV of 1889 (Merchandise Marks), as modified up to 1st June, 1891. In Urdu. 2a. (1a.)
- Act VII of 1889 (Succession Certificates). In Urdu. 1a. 6p. (1a.)
- Act X of 1889 (Ports), as modified up to 1st June, 1894. In Urdu. 5a. (2a.)
- Act XIII of 1889 (Cantonments), as modified up to 1st March, 1895. In Urdu. 2a. 3p. (1a. 9p.)
Ditto. In Nagri. 3a. (1a. 9p.)
- Act XV of 1889 (Official Secrets). In Urdu. 3p. (1a.)
- Act I of 1890 (Revenue Recovery). In Urdu. 3p. (1a.)
- Act VIII of 1890 (Guardians and Wards). In Urdu. 2a. 3p. (1a. 9p.)
- Act IX of 1890 (Railways), as modified up to 1st May, 1896. In Urdu. 8a. (2a.)
Ditto. In Nagri. 8a. (2a.)
- Act XI of 1890 (Prevention of Cruelty to Animals). In Urdu. 3p. (1a.)
- Act V of 1891 (Ports Act Amendment). In Urdu. 3p. (1a.)
- Act VI of 1892 (Limitation Act and Civil Procedure Code Amendment). In Urdu. 3p. (1a.)
- Act IV of 1893 (Partition). In Urdu. 3p. (1a.)
- Act VIII of 1893 (Coinage and Paper Currency Acts Amendment). In Urdu. 3p. (1a.)
Ditto. In Nagri. 3p. (1a.)
- Act X of 1893 (Excise Act Amendment). In Urdu. 3p. (1a.)
Ditto. In Nagri. 3p. (1a.)
- Act I of 1894 (Land Acquisition). In Urdu. 2a. 3p. (1a. 6p.)
Ditto. In Nagri. 1a. 6p. (1a. 6p.)
- Act III of 1894 (Criminal Procedure and Penal Codes Amendment). In Urdu. 3p. (1a.)

IV.—TRANSLATIONS OF ACTS AND REGULATIONS OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL—*concl'd.*

Act V of 1894 (Civil Procedure Code Amendment). In Urdu. 3*p.* (1*a.*)

Ditto. In Nagri. 3*p.* (1*a.*)

Act VIII of 1894 (Tariff), as modified up to 1st March, 1896. In Urdu. 4*a.* 9*p.* (1*a.*)

Ditto. In Nagri. 4*a.* 3*p.* (2*a.*)

Act IX of 1894 (Prisons). In Urdu. 1*a.* 6*p.* (1*a.*)

Ditto. In Nagri. 1*a.* 6*p.* (1*a.*)

Act X of 1894 (Criminal Procedure Code Amendment). In Urdu. 3*p.* (1*a.*)

Act XVI of 1894 (Tariff Act Amendment). In Urdu. 2*a.* 6*p.* (1*a.* 6*p.*)

Ditto. In Nagri. 2*a.* (1*a.*)

Act XVII of 1894 (Cotton-duties). In Urdu. 1*a.* (1*a.*)

Ditto. In Nagri. 1*a.* (1*a.*)

Act IV of 1895 (Criminal Procedure Code Amendment). In Urdu. 3*p.* (1*a.*)

Ditto. In Nagri. 3*p.* (1*a.*)

Act VII of 1895 (Civil Procedure Code and Punjab Laws Act Amendment). In Urdu. 3*p.* (1*a.*)

Ditto. In Nagri. 3*p.* (1*a.*)

Act XII of 1895 (Companies—Memorandum of Association). In Urdu. 3*a.* (1*a.*)

Act XIV of 1895 (Pilgrim Ships). In Urdu. 1*a.* 3*p.* (1*a.*)

Act II of 1896 (Cotton duties). In Urdu. 1*a.* 3*p.* (1*a.*)

Ditto. In Nagri. 1*a.* (1*a.*)

Regulation V of 1890 (British Baluchistan Forests). In Urdu. 2*a.* (1*a.* 6*p.*)

Regulation VI of 1893 (Hazara Forests). In Urdu. 2*a.* (1*a.* 6*p.*)

V.—MISCELLANEOUS PUBLICATIONS.

Annual Indices to the Acts of the Governor General of India in Council from 1854 to 1895. The price is noted on each.

Report of Indian Law Commission, 1879. Foolscap, boards. R1. (5*a.*)

Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations, from July, 1882 to 1895. Super-royal 4to. Annual subscription R5. (R1). Single issue 4*a.*, including postage.

A Digest of the Statutes and Acts relating to Merchant-Shipping in India, Ed. 1884. By T. A. PEARSON, Barrister-at-Law. Price R5. (12*a.*)

V.—MISCELLANEOUS PUBLICATIONS—*concl'd.*

A Digest of Indian Law Cases; containing High Court Reports, 1862—86, and Privy Council Reports of Appeals from India, 1836—86, with an Index of cases. Compiled, under the orders of the Government of India, by JOSEPH VERE WOODMAN, of the Middle Temple, Barrister-at-Law, and Advocate of the High Court, Calcutta. In five volumes. Super-royal 8vo. Price ₹50 per set; Quarter-bound copies, ₹55. (₹3-2), payable in advance.

Lists of British Enactments in force in Native States. Compiled by J. M. MACPHERSON, of the Inner Temple, Barrister-at-Law, Deputy Secretary to the Government of India, Legislative Department. Full Cloth, super-royal 8vo. :—

Vol. I. Southern India (Madras and Mysore). Corrected up to 30th November, 1888. Price ₹2-8. (4a.)

Vol. II. Southern India (Hyderabad). Corrected up to 31st December, 1888. Price ₹4-8. (6a.)

Vol. III. Northern India (Bengal, Assam, Burma, the North-Western Provinces, the Punjab, Kashmir, Nepal and Baluchistan). Corrected up to the 20th May, 1891. Price ₹4. (6a.)

[Vol. IV (Rajputana) is out of print.]

Vol. V. Central India (Central Provinces and the Central India Agency). Corrected up to the 31st December, 1892. Price ₹4. (6a.)

Vol. VI. (Western India comprising the Native States under the Political Control of the Government of Bombay and the Baroda Agency together with a supplement relating to the Persian Coast and Islands, Maskat, the Somali Coast and Zanzibar). Corrected up to the 31st December, 1894. ₹5. (8a.)

Index to Act V of 1869 (Indian Articles of War), as modified up to 1st January, 1895. 7a. (2a.)

Ditto ditto. In Urdu and Nagri. 7a. (2a.)

Contents to ditto. In Urdu and Nagri. 1a. 9p. (1a.)

The Baluchistan Agency Forest Law, 1890. In Urdu. 2a. (1a. 6p.)